

# Oneida Tribe of Indians of Wisconsin

**Legislative Reference Office**

P.O. Box 365

Oneida, WI 54155

(920) 869-4376

(800) 236-2214

<http://oneida-nsn.gov/LOC>

**Committee Members**

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

Jennifer Webster, Councilmember

## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

December 17, 2014 9:00 a.m.

**I. Call To Order and Approval of the Agenda****II. Minutes to be approved**

1. December 3, 2014 LOC Meeting Minutes

**III. Current Business**

1. Higher Education
2. Rules of Appellate Procedure Amendments
3. Pow-wow Committee Bylaws
4. Children's Code
5. Leasing Law

**IV. New Submissions**

1. Investigative Leave Policy Amendments
2. Environmental, Health and Safety Law
3. Removal Law Amendments

**V. Additions****VI. Administrative Updates****VII. Executive Session****VIII. Recess/Adjourn**

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## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
December 3, 2014 9:00 a.m.

**PRESENT:** Jennifer Webster, Fawn Billie, Tehassi Hill

**EXCUSED:** Brandon Stevens

**OTHERS PRESENT:** Lynn Franzmeier, Candice Skenandore, Danelle Wilson, Fawn Cottrell, RC Metoxen, Rae Skenandore, Taniquelle Thurner, Laura Manthe, Matt Denny

### I. Call To Order and Approval of the Agenda

Tehassi Hill called the December 3, 2014 Legislative Operating Committee meeting to order at 8:59 a.m.

Motion by Jennifer Webster to approve the agenda; seconded by Fawn Billie. Motion carried unanimously.

### II. Minutes to be approved

#### 1. November 19, 2014 LOC Meeting Minutes

Motion by Jennifer Webster to approve the November 19, 2014 LOC Meeting Minutes; seconded by Fawn Billie. Motion carried unanimously.

### III. Current Business

#### 1. Agriculture Law (1:02 – 1:46)

Motion by Jennifer Webster to accept the Agriculture Law memorandum as FYI; seconded by Fawn Billie. Motion carried unanimously.

#### 2. Public Use of Tribal Land Amendments (1:47-2:36)

Motion by Jennifer Webster to forward the Public Use of Tribal Land Amendments to the Oneida Business Committee for consideration of adoption; seconded by Fawn Billie. Motion carried unanimously.

#### 3. Furlough Policy (2:38-4:17)

Motion by Jennifer Webster to direct that a fiscal impact statement and a legislative analysis be conducted on the Furlough Policy; seconded by Fawn Billie. Motion carried unanimously.

### IV. New Submissions

**V. Additions**

**VI. Administrative Updates**

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by Fawn Billie to adjourn the December 3, 2014 Legislative Operating Committee meeting at 9:03 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



# Legislative Operating Committee

## December 17, 2014

### Higher Education

**Submission Date:** October 15, 2014

☐ Public Meeting:  
☐ Emergency Enacted:

**LOC Sponsor:** Fawn Billie

**Summary:** *Higher Education proposed funding changes for Fall 2014-2015. The OBC requested a legislative analysis of the changes which were made to the Student Handbook. Following this action, the OBC directed the LOC to look at codifying the rules created by the Higher Education Office, which currently govern how Higher Ed disburses higher education funding in accordance with GTC directives.*

**08/23/14 OBC:** Motion by Vince Delarosa request the BC to direct the proposed Higher Education changes be put on hold until 1) A legal review and legislative analysis are completed and 2) A notice of the amendments and the effects of the amendments are provided to the GTC at an Annual or Semi-Annual meeting, seconded by Brandon Stevens. Motion carried unanimously.

Motion by David Jordan to direct Higher Education and Governmental Division to send out a notification in the next Kalihwisaks and to include all the students that are within their database who are applying for financial assistance in that notification, saying that the new proposed changes are being put on hold, seconded by Vince Delarosa. Motion carried unanimously.

**10/01/14 LOC:** Motion by Fawn Billie to approve the memo and forward to the Oneida Business Committee for acceptance; seconded by Jennifer Webster. Motion carried unanimously.

**10/08/14 OBC:** Motion by Lisa Summers to send this issue back to LOC for a draft law or policy to come back to the Business Committee when ready, seconded by Trish King. Motion carried unanimously.

**10/15/14 LOC:** Motion by Jennifer Webster to add Higher Education to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Fawn Billie will be the sponsor.*

**Next Steps:**

- Review the memo from the sponsor regarding the Higher Education legislation and accept as FYI.

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**Committee Members**

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

Jennifer Webster, Councilmember

**Memorandum**

**TO:** Oneida Business Committee  
**FROM:** Fawn Billie, Councilmember  
**DATE:** December 10, 2014  
**RE:** Higher Education Law

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On October 8, 2014, the Oneida Business Committee deferred a possible Higher Education law to the Legislative Operating Committee for development. On October 15, 2014, the LOC added this item to the Active Files List, with myself as the sponsor. Approximately sixty days have passed since the LOC added this item to the Active Files List and this memo serves as an update as to where the legislation is at in the LOC process.

The Higher Education Office has been contacted regarding next steps concerning this legislation and my office is working with them, as well as the Legislative Reference Office to incorporate the provisions currently found in the Higher Education Student Handbook (Handbook) into the legislation. The Handbook contains information regarding the implementation of the Higher Education Scholarships directed by GTC Resolution. We are working on creating a balance between incorporating provisions of the Handbook into the Law while at the same time giving the Higher Education Office the flexibility it needs to operate without having to request legislative changes with every change that occurs in the education system. I've attached the Handbook for your information and will bring forward a draft law when it is completed.

**Requested Action**

Motion to accept the memo regarding the status of the Higher Education Law as FYI.



# Higher Education Student Handbook



***Oneida Tribe  
of Indians of Wisconsin***



# Oneida Higher Education Scholarship

## Mission Statement

The Oneida Higher Education program is to promote higher education to eligible Tribal members by providing guidance, support, and financial assistance to those attending accredited institutions of higher learning with a goal toward self-sufficiency.

If you have any questions or concerns, please contact our office. We welcome the opportunity to assist you as you pursue and earn your degree.

### **Office Hours**

Monday through Friday  
8:00 a.m. – 4:30 p.m.

### **Telephone**

920-869-4033  
1-800-236-2214 ext. 4033

### **Fax**

920-869-4039

### **Office Email**

[highered@oneidanation.org](mailto:highered@oneidanation.org)

### **Web Page**

[www.oneida-nsn.gov/highered](http://www.oneida-nsn.gov/highered)

### **Mailing Address**

Oneida Higher Education Office  
P O Box 365  
Oneida, WI 54155

### **Location**

Norbert Hill Center (North wing)  
N7210 Seminary Rd  
Oneida WI 54155



The Oneida Higher Education Applications and forms can be found on our web page,  
[www.oneida-nsn.gov/highered](http://www.oneida-nsn.gov/highered)

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The material contained in this handbook is presented for information. It is a summary of the minimum requirements. The scholarship or other benefits may have additional requirements not listed here.

## **Article 1: INTRODUCTION**

The Oneida Higher Education (OHE) office acts as a financial aid office, processing the Oneida Higher Education scholarship and assisting clients in completing the Free Application for Federal Student Aid (FAFSA). The Oneida Higher Education office provides career/college advising, career assessments, area high school visits, community financial aid workshops and annual college fairs to promote higher education awareness.

The Oneida Tribe of Indians of Wisconsin Higher Education scholarship consists of a tiered funding system (*General Tribal Council Resolution 1-30-10-A*). Funding will be based on the academic school year of August 1 to July 31.

The scholarship is determined by the school's financial aid office standard cost of attendance and on the Oneida Higher Education funding guidelines. The scholarship is not intended to replace annual income or meet total personal or household expenses.

- Vocational or undergraduate degree up to \$20,000 per year
- Master's degree up to \$25,000 per year
- Doctorate degree up to \$30,000 per year

## **Article 2: FERPA – CONSENT TO RELEASE STUDENT INFORMATION**

The Oneida Higher Education Office (OHE) requires the student's written authorization to release their confidential information. This requirement is in compliance with the Privacy Act of 1974 (Public Law 93-579) the Family Educational Rights and Privacy Act (FERPA) which is designed to protect the privacy of the student's educational records. The Act does not allow any person(s) to have access to an individuals' information without consent.

College students are considered responsible adults and are allowed to determine who will receive information about them. While parents (or spouses) understandably have an interest in a student's academic progress, they are not automatically granted access.

Students must complete the ["FERPA"](#) form in order for another individual to access their OHE records.

## **Article 3: SCHOLARSHIP ELIGIBILITY REQUIREMENTS**

1. Must be an enrolled member of the Oneida Tribe of Indians of Wisconsin.
2. Must have a High School diploma or equivalent.
3. Must be accepted into a degree seeking program at an accredited college/university within the United States.
4. Must be in good standing with the Oneida Higher Education Office.
5. Must be in good standing with the academic institution.

#### **Article 4: APPLICATION REQUIREMENTS**

1. Submit a copy of the college/university letter of acceptance/admission for new, re-entry and transfer students. (*Students who have not attended school for one or more semesters will need to submit a current letter of admissions*).
2. Complete the Free Application for Federal Student Aid (FAFSA) as soon after January 1st of each year at [www.fafsa.gov](http://www.fafsa.gov).
3. Comply with the school's financial aid process and requirements.
4. Complete the following Oneida Higher Education Application/Forms:
  - a. [Oneida Higher Education Application](#) each academic year.  
Application (priority) dates: April 15 (Fall semester/term), October 1 (Spring semester/term), May 1 (Summer semester/term).
  - b. [Oneida Participant Acknowledgment and Agreement](#) form each academic year.
  - c. [Oneida Higher Education Academic Plan](#) each semester/term. Meet with a school counselor/advisor regarding your class schedule and academic planning. The Oneida academic plan must be signed by the student and counselor/advisor.

#### **Article 5: STUDENT RESPONSIBILITIES**

1. Expenses required prior to attending school will be the student's responsibility. Expenses may include: Admission fees, housing deposits, transportation to the school, and other related fees.
2. Abide and comply with the policies and procedures and eligibility requirements of the Oneida Higher Education Scholarship Program.
3. Periodically check with the Oneida Higher Education office and the school's financial aid office ensuring all required documents are completed and/or received.
4. Complete the total number of credits within the semester/term for which the Oneida Higher Education scholarship was provided (includes video and on-line courses).
5. Submit a copy of an approved consortium agreement if attending more than one institution during the same academic semester/term.
6. Request an "Official Transcript" of grades be sent to Oneida Higher Education after each semester/term of funding to close out the funded term. Any applicable transcript fees will be the student's responsibility.
7. Submit a copy of diploma and complete the ["Student Graduation Questionnaire"](#) upon graduation and have a final official transcript sent to OHE to finalize the students file.
8. Notify the Oneida Higher Education office of any changes, e.g., a change in schools, mailing address, phone number, email address, degree programs, a change in the number of college credits, financial aid, etc.

#### **Article 6: FUNDING PROCESS**

1. Students are advised not to start school/classes until they receive the Oneida Higher Education Scholarship Award Letter. Students who choose to start prior to the receipt of the Oneida award letter are responsible for any incurred costs.
2. Oneida Higher Education funding will be based on an August 1 - July 31 academic school year.

3. To be considered for the Oneida Higher Education scholarship students must have a complete file prior to the end of semester/term. A complete file consists of:
  - a. [Oneida Higher Education Application](#)
  - b. [Oneida Higher Education Academic Plan](#)
  - c. [Participant Acknowledgment and Agreement Form](#)
  - d. A Letter of Acceptance/Admission
  - e. Financial Need Analysis (FNA) Form (*Oneida H.E. sends this form directly to the school's financial aid office for completion*)
  - f. Official Transcript of grades (*after each semester/term of funding to close out the prior funded term; the transcript is also used to determined academic eligibility for continued funding*).
4. Student files will be reviewed and awarded in order of completion. It is important to have files completed as early as possible to ensure funding is received in a timely manner.
5. An Oneida Higher Education award letter listing the Oneida scholarship amount(s) will be mailed to the student, with a copy sent to the school's financial aid office.
6. The Oneida Higher Education scholarship will be sent directly to the school for disbursement. Each school has their own policy regarding the release of financial aid funds in which the student must abide.
7. Incomplete files will not be considered for funding. The OHE office cannot retroactively award funding for a semester/term that is no longer in session.

## Article 7: SCHOLARSHIP AWARD DETERMINATION

Table 1: Scholarship Funding

Student Status "Traditionally"	Credits Per Term	Oneida Scholarship Funding
<b>Full-Time:</b> Vocational/Undergraduate Graduate/Post-graduate	12 credits 9 credits	Tuition/fees, required books and room/board: Other costs of attendance will be based on the student's individual financial need as determined by the FAFSA and the school's Financial Aid Office.
<b>Part-Time:</b> Vocational/Undergraduate Graduate/Post-graduate	6-11 credits 6- 8 credits	Tuition/fees and required books: Other costs of attendance will be based on the student's individual financial need as determined by the FAFSA and the school's Financial Aid Office
<b>Less than Part-time:</b>	1-5 credits	Tuition/fees and required books:
<b>Cosmetology:</b>	Required hours per student contract	Tuition/fees and required books/supplies: Other costs of attendance will be based on the student's individual financial need as determined by the FAFSA and the school's Financial Aid Office.

1. Higher education programs or degrees must be eligible for federal financial aid (Title IV).

*Oneida students are required to apply for Pell Grants as part of their financial aid request in order to determine eligibility... (GTC Resolution 8-12-96-A). The Pell Grant is currently referred to as Title IV funding and eligibility is determined by completing the Free Application for Federal Student Aid (FAFSA).*

2. Funding for study abroad which is a requirement to graduate will be coordinated with the school's financial aid office to include the cost of tuition, room & board and transportation. Personal and misc. expenses will be the student's responsibility. Funding for non-required study abroad college credit(s) will consist of tuition/fees and required books.
3. Students taking classes 100% on-line will be eligible for tuition/fees and required books. Other cost of attendance items will be based on the standard online budget developed by the OHE office.
4. Schools that do not offer standard semesters/terms will be created by OHE similar to traditional schools to determine the appropriate Oneida scholarship amount (e.g., accelerated, year around, online, etc.).
5. Final determination of funding will be determined by the Oneida Higher Education Office based on current program guidelines which are subject to change.
6. Funding cannot be awarded for a semesters/term that is no longer in session.

#### **Article 8: FUNDING COLLEGE CREDIT FOR PRIOR LEARNING/EXPERIENCE**

1. Students have the opportunity to earn academic credit for previous education or life experience for which credit has not already been earned. These types of credit opportunities are coordinated through the student's individual school.
2. To apply for tuition reimbursement, students must submit their original receipts and documentation of their successful credit approval/completion.

#### **Article 9: LENGTH OF FUNDING ELIGIBILITY**

1. Students are eligible to receive a specific number of years of funding to obtain their degree.

<b>Academic Degrees</b>	<b>Length of Eligibility</b>	<b>Oneida Scholarship Limits Per Academic Year</b>
Vocational/Associate	2.5 years or equivalent	\$20,000
Undergraduate (Bachelor's)	5 years or equivalent	\$20,000
Graduate (Master's)	3 years or equivalent	\$25,000
Doctoral (Doctorate)	5 years or equivalent	\$30,000

*Per Resolution #GTC 12-7-96-C (Amendment to Resolution 8-12-96A)*

2. Applicants are eligible to pursue degrees in a consecutive order (as listed in #1).
3. Summer school funding will be pro-rated and counted as a term when the total number of full-time credits is reached.
4. Students funded for 1 to 5 credits per semester/term are not subject to the above length of eligibility.
5. For other post-graduate degree resources contact the American Indian Graduate Center [www.aigcs.org](http://www.aigcs.org).

## Article 10: INELIGIBLE FACTORS

1. Pursuing a duplicate or a lesser degree.
2. Seeking the Oneida Higher Education Scholarship after the semester/term has ended.
3. Suspension from Oneida Higher Education Scholarship.
4. Courses required to update/maintain a license.
5. Post-degree certificates, workshops, seminars, conferences, continuing education credits/units.
6. Programs/degrees ineligible for student federal financial aid (Title IV), e.g., apprenticeships, certificates, etc.
7. Federal student loan default
8. Not meeting the school's Satisfactory Academic Progress (SAP)

## Article 11: GRADING REQUIREMENTS

1. Students are required to "successfully complete" all the credits/courses they were funded for within the semester/term. The semester/term grade point average (g.p.a.) is based on a 4.0 grading scale. Students must meet and abide by the college/university g.p.a. requirements.

Table 2: Grade Point Averages

Degree	Academic Requirements
Vocational/Associate	2.0 g.p.a.
Undergraduate	2.0 g.p.a.
Graduate	3.0 g.p.a.
Doctorate	3.0 g.p.a. *
Cosmetology (Technical Diploma)	(Monthly requirement) Attendance = minimum 90% Written portion = minimum 80% Skills/Practical portion = minimum 80%

*\*Higher Education Office can utilize a school's grading policies for those professional doctoral students where a g.p.a. below 3.0 is acceptable and in good academic standing (Per Special Resolution 7-24-02-A).*

2. Courses that do not have associated grades or grade points averages (g.p.a.) such as, incompletes, withdrawals, in progress, unsatisfactory, failing, etc., will be considered as non-passing.
  - a. The semester/term g.p.a. will then be recalculated based on the number of actual credits funded.

**Article 12: PROBATION AND SUSPENSION GUIDELINES:**

The following will be used to determine the continuation of funding under the Oneida Higher Education Scholarship Program.

1. Students shall be placed on either probation or suspension for failure to earn the required semester/term grade point average (g.p.a.).
  - a. Undergraduate/technical students with a semester/term g.p.a. of 1.0 up to and including 1.9 will be placed on probation. Graduate students with a semester/term g.p.a. of 2.0 up to and including 2.9 will be placed on probation.  
Cosmetology students with a monthly progress report that falls below the academic requirements in one of the areas: (attendance 90%, written 80%, practical 80%) will be placed on probation.
  - b. Undergraduate/technical students with a semester/term g.p.a. that falls below 1.0 will be suspended. Graduate students with a semester/term g.p.a. that falls below 2.0 will be suspended.  
Cosmetology students with a monthly progress report that falls below the academic requirements in two or more of the following areas: (attendance 90%, written 80%, practical 80%) will be suspended.
2. Students shall be placed on either probation or suspension for failure to successfully complete all of the credits for which Oneida Higher Education has provided a scholarship award.
  - a. Students who do not complete all of the credits for which they were funded will be placed on probation.
  - b. Students who do not complete at least half of the credits for which they were funded will be suspended.
3. Students may be placed on either probation or suspension for combinations of #1 a-b and #2 a-b.
  - a. If students complete at least half of the credits for which they were funded with a semester/term g.p.a. of 1.0 or better for undergraduate/technical and 2.0 or better for graduate they will be placed on probation.
  - b. If students complete at least half of the credits for which they were funded but their semester/term g.p.a. is below 1.0 for undergraduate/technical or 2.0 for graduate they will be suspended.

**Probation Status:**

Students on probation will continue to receive the Oneida Higher Education scholarship for their next semester/term. They are strongly encouraged to meet with their school's advisors to develop a plan for academic improvement.

- a. During the probation period the student must complete all the credits for which they received an Oneida scholarship, with a g.p.a of a 2.0 or better as an undergraduate/technical school student or a 3.0 or better for a graduate student.
- b. Students are required to have an "official" transcript of grades sent to the Higher Education Office to determine if they met the program requirements.
- c. Students who do not meet the probation requirements will be suspended.

**Suspension Status:**

Students will be denied the Oneida Higher Education scholarship while on suspension. It is the student's responsibility to seek alternative funding during the suspension period. To be reinstated, students have the following options:

- a. Complete the same number of credits that were funded during the term of academic suspension at an accredited post-secondary Institution.
- b. An undergraduate student must earn a g.p.a of 2.0 or better; *whereas, master and doctorate level students must make-up credits at the same academic level in which they were funded earning a 3.0 g.p.a.*
- c. Repay the entire Oneida Higher Education scholarship that was awarded to them for the semester/term in which they were placed on suspension.

**Article 13: STUDENT LOAN DEFAULT OPTIONS**

1. Students who are in student loan default "may" have options available to be reconsidered for federal financial aid. (Student should contact the loan lender to discuss options).
2. For addition information go to [www.ed.gov](http://www.ed.gov) or call the ED's Servicing Center at 1-800-621-3115 regarding loan repayment, consolidation, default, disputes, etc.

**Article 14: APPEAL PROCESS**

1. To ensure equitable treatment for all students, an applicant who has been placed on suspension or denied funding from the Oneida Higher Education Scholarship program may file an Appeal.
2. After the student receives written documentation from the Oneida Higher Education Office informing them they are not eligible for funding and the specific reason; the student may contact the Oneida Higher Education Office for an appeal form/directions.
3. The student will be given (30) calendar days as listed in the appeal letter to complete all steps of the appeal process with supporting documentation to the Oneida Higher Education Office. Upon receipt of the student's appeal application, the Higher Education Review Team has (10) business working days from the date the appeal was received to review and respond in writing.
4. If the student's appeal is denied, the student may submit a second appeal in writing to the Higher Education Manager with attached supporting documents within (30) calendar days from the date of their initial denial letter. The Higher Education Manager, has (10) business working days from the date the appeal was received to review and respond in writing.
5. If the student is denied by the Higher Education Manager, the student may submit a final appeal in writing with supporting documents within (10) business working days from the second denial letter to the Education and Training Area Manager, P.O. Box 365, Oneida, WI 54155. The Education and Training Area Manager has (10) working days from the date the appeal was received to review and respond in writing with a copy to the Higher Education Office for the student file.
  - a. Upon receipt of the appeal the Area Manager will verify the applicant followed the proper appeal process (Article 15, number 1 to 4).

- b. Should the Education and Training Area Manager receive a student appeal that did not follow OHE appeal process; the Area Manager will advise the student to utilize the appeal process as outlined.
- c. The Education and Training Area Manager will request the student to provide a “written consent” authorizing the Area Manager to access their Oneida Higher Education records/file.
- d. The decision of the Education and Training Area Manager is final.

### **Article 15: ONEIDA TRUST SCHOLARSHIP**

1. This scholarship is being provided by the Oneida Enrollment/Trust Committee with specific policy and procedures separate from the Oneida Higher Education Scholarship program. The Trust Scholarship fund is to provide scholarships assistance to eligible enrolled Oneida tribal members in securing higher educational opportunities in the following areas with a lifetime scholarship amount of \$3,000.
  - a. Post-secondary required pre-requisite credited classes
  - b. Post-graduate preparation and admission exams (e.g., GRE, LSAT, MCAT, GMAT...)
  - c. Post-secondary preparatory program/course
2. Applicants must complete the [Trust Scholarship Application](#) with required documents. The applicant must be in good standing with the Oneida Higher Education Office.
3. The Oneida Trust/Enrollment Committee respectfully requests that all recipients keep in mind the prospect of returning to the Oneida Tribe to share their acquired knowledge, experience and education.

*The material contained in this booklet is presented for information only.  
 There may be additional requirements or policies not listed.  
 The Higher Education Student Handbook is subject to change.  
 Revised October 2014*

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#### **References:**

GTC Resolution 8-12-016-A  
 GTC Resolution 12-8-06-C (Amendment to Resolution 8-12-96-A)  
 Special Resolution 7-24-02-A (Amendment to Resolution 8-12-96-A)  
 GTC 1-30-10-A (Oneida Higher Education Scholarship and Tiered Funding)  
 Trust Scholarship Policy and Procedure (Amended-BC 12-11-13E)



# Legislative Operating Committee

## December 17, 2014

# Rules of Appellate Procedure Amendments

**Submission Date:** September 17, 2014

Public Meeting:  
☐ Emergency Enacted:  
 Expires:

**LOC Sponsor:** Jennifer Webster

**Summary:** *A review of the Rules led to a request that the LOC make amendments to the Rules to improve the process. On July 30, 2014, the LOC accepted these items as FYI and requested the LRO to bring this proposal to the next LOC. This item was carried over into the current term by the LOC.*

**9/17/14 LOC:** Motion by Jennifer Webster to add the Rules of Appellate Procedure to the Active Files List with Jennifer Webster as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

**10/15/14 LOC:** Motion by Fawn Billie to defer this item to the Legislative Reference Office for additional changes based on comments received from the Court yesterday; seconded by Tehassi Hill. Motion carried unanimously.

### Next Steps:

- On December 19, 2014, the OBC will consider a request to adopt emergency amendments to the Rules of Appellate Procedure.
- Ratify the e-poll from December 12, 2014 and direct the LRO to continue to process these amendments for permanent adoption.

ONEIDA TRIBAL JUDICIARY

Memorandum

To: Jennifer Webster, Councilwoman, LOC/LRO Member  
From: Gerald L. Hill, Chief Appellate Judge  
Date: December 2, 2014  
Re: Proposed and Recommended Revisions to Chapter 154, Rules of Appellate Procedure

Dear Councilwoman Webster,

Attached you will find the above document. This law was originally adopted by the OGTC in its Resolutions 1-7-13-B. Revisions to this law have been pending in the LOC pending review of the Judiciary after the judges were elected.

You will note the revisions, including lined-out text, are included in the attachment for your consideration and facility in reading and comparing the original text with the new proposed text. These changes are in **RED** (Attorney Paul Stenzel's recommendations) and **BLUE** (proposed recommended changes by the Judiciary Judges), also for your convenience in reviewing.

As you can see, the proposed revisions are, in essence, for clarification as is added text, e.g. new definitions and inadvertent omissions, e.g. added reference to Initial Review of Notice of Appeal.

As the time for the entire LOC process to formally amend Chapter 154 cannot occur before January 5, 2015, it is respectfully requested that the changes, as submitted, be reviewed by the LOC and enacted by the OBC under its emergency powers. This would allow the new Judiciary, i.e. Tribal Court, to commence its new responsibilities, with fully consistent operational Rules, as indicated when the OBC passed the Resolutions on October 28, 2014 to reschedule the start date of the Court to January 5, 2015.

## Chapter 154

### Rules of Appellate Procedure

154.1. Purpose and Policy	154.10. Motions
154.2. Adoption, Amendment Repeal	154.11. Briefs
154.3. Definitions	154.12. Oral Argument
154.4. General Provisions	154.13. Entry and Form of Judgment
154.5. Initiating the Appeal	154.14. Interest of Judgments
154.6. Appeal by Permission	154.15. Penalties
154.7. Joint, Consolidated, and Cross Appeals	154.16. Substitution of Parties
154.8. Service, Filing and Certification	154.17. Costs
154.9. Time Computation	

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#### 154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall under the jurisdiction of the Tribe.

154.1-2. *Policy.* It is the policy of the Tribe that these rules are to be liberally construed to ensure a speedy, fair, and inexpensive determination of every appeal.

#### 154.2. Adoption, Amendment Repeal

154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-B.

154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

154.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

154.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

#### 154.3. Definitions

154.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Advocate" shall mean an Oneida non-attorney advocate as provided by law or other advocate who is presented to the court as the representative or advisor to a party

~~(a)(b)~~ (b) "Agent" shall mean a person authorized to act on behalf of another.

~~(b)(c)~~ (c) "Amicus Curiae" shall mean (literally, friend of the court) a person who is not a party to a case, nor solicited by any of the parties, who files a brief to assist the Court by furnishing information or advice regarding questions of law or fact.

~~(c)(d)~~ (d) "Answer" shall mean a written response in opposition to a brief or petition.

~~(d)(e)~~ (e) "Appeal" shall mean a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body.

~~(e)(f)~~ (f) "Appellant" shall mean a person who files a notice of appeal.

~~(f)(g)~~ (g) "Attorney" shall mean a person who is admitted to practice law. ~~an Oneida non-attorney advocate as provided by law and other advocate who is admitted to practice law and is presented to the court as the representative or advisor to a party.~~

- ~~(g)~~(h) “Brief” shall mean a written legal document which aids in the Court’s decision by reciting the facts of the case, the arguments being raised on appeal, and the applicable law.
- ~~(h)~~(i) “Clerk” shall mean the Clerk of the Court of Appeals.
- ~~(i)~~(j) “Court” shall mean the Court of Appeals of the Tribe.
- ~~(j)~~(k) “Cross-Appeal” shall mean an appeal brought by the Respondent against the Appellant after the Appellant has already filed an appeal.
- ~~(k)~~(l) “Days” shall mean calendar days, unless otherwise specifically stated.
- ~~(l)~~(m) “Docketed” shall mean an appeal that has been filed and assigned a docket number.
- (n) “Electronic” shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.
- ~~(m)~~(o) “Initial Review” shall mean review of the Notice of Appeal to determine if the case is acceptable for appellate review.
- ~~(n)~~(p) “Interlocutory” shall mean an order or appeal that occurs before the Trial Court issues a final ruling on a case.
- ~~(o)~~(q) “Joinder” shall mean the joining together of several claims or several parties all in one (1) hearing, provided that the legal issues and the factual situation are the same for all Appellants and Respondents.
- (r) “Judiciary” shall mean the Oneida Tribal Judicial System.
- ~~(p)~~(s) “Original hearing body” shall mean the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law.
- ~~(q)~~(t) “Petitioner” shall mean a person filing a petition.
- (u) “Pro se” shall mean advocating on one's own behalf before the Court, rather than being represented by an attorney or advocate.
- ~~(t)~~(v) “Record” shall mean all materials identified in 154.8-4 (a) of these Rules.
- ~~(s)~~(w) “Reply Brief” shall mean a brief of a party to a legal action in answer to points of law raised in an opponent's brief but not in his or her own.
- ~~(t)~~(x) “Respondent” shall mean a person adverse to the Appellant.
- ~~(u)~~(y) “Rules” shall mean the Court of Appeals Rules of Procedure.
- ~~(v)~~(z) “Stay” shall mean a suspension of a case or a suspension of a particular proceeding, including orders, within a case that prevents enforcement pending appeal or other circumstances.
- ~~(w)~~(aa) “Trial Court” shall mean the Trial Court of the Tribe or an Original hearing body.
- ~~(x)~~(bb) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- ~~(y)~~(cc) “Tribal law” shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

#### **154.4. General Provisions**

154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

154.4-2. On its own or by a party's motion; the Court may, to expedite its decision or for other good cause, suspend any provision of these Rules in a particular case and order proceedings as it directs.

154.4-3. The Chief ~~Justice~~Judge of the Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court’s

opinion. There shall not be a new trial in the Court. The Court may review both the factual findings and conclusions of law of the Trial Court.

### **154.5. Initiating the Appeal**

154.5-1. *Right of Appeal.* Any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

(a) In any case brought on appeal, the Appellant may petition the Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. The Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

(b) In the event the ~~appeal~~ appeal- or request for stay is denied, the Court shall state the reasons for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

154.5-2. *Notice of Appeal.* Any party who is appealing shall appeal in the manner prescribed by this Rule.

(a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order, together with a filing fee, as set by the Court, within thirty (30) days after the day such judgment or order was rendered. A Notice of Appeal shall not be filed by electronic means.

~~(a)~~ (b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of Appeal as provided under 154.5-3, three Appellate Judges shall be assigned to perform an Initial Review of the Notice of Appeal.

(1) *Waiver of Fee.* The Chief Judge of the Court may waive the filing fee upon motion for a fee waiver by the Appellant where the Chief Judge is satisfied the Appellant lacks the means to pay the filing fee. The motion shall include an affidavit demonstrating inability to pay and shall accompany the Notice of Appeal.

~~(b)~~ (c) In addition to the Notice of Appeal and filing fee, the following information shall be provided upon the filing of the notice:

- (1) A copy of the written decision of the Trial Court or original hearing body;
- (2) A short statement explaining what relief is sought by the Appellant;
- (3) A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested;
- (4) Name, address and phone numbers of all parties, including respondent; and
- (5) Name, address and phone numbers of all party attorneys, if known.

~~(c)~~ (d) A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court, or a motion for waiver of this requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may be waived only when, in the judgment of the Court, such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The motion for waiver of the deposit/bond requirement shall be requested with notice to all parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or waived.

(1) *Exception.* The Tribe, or an officer or agency of the Tribe shall be exempt from the requirement of providing any cash deposit or bond. The exemption under this section shall be automatic and shall not require a motion or waiver.

~~(d)~~(e) An appeal shall not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

154.5-3. *Perfection of Notice.* If the appellant fails to provide a completed Notice of Appeal Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall be notified of any filing deficiencies by the Clerk within five (5) business days and shall have five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) business days may result in the non-acceptance of the appeal.

#### **154.6. Appeal by Permission**

154.6-1. *Appeal by Permission.* An appeal from an interlocutory order may be sought by filing a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of such order with proof of service on all other parties to the action. Within ten (10) business days after service of the petition an adverse party may file an Answer in opposition. A decision shall be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation unless good cause to extend the deadline is found by the Court. This extension shall be in writing. The petition shall contain:

- (a) a statement of the facts necessary to develop an understanding of the question of law determined by the order of the Trial Court; and
- (b) a statement of the question itself; and
- (c) a statement of the reasons why substantial basis exists for a difference of opinion on the question;
- (d) the relief sought; and
- (e) why an immediate appeal may:
  - (1) materially advance the termination of the litigation;
  - (2) protect the petitioner from substantial or irreparable injury; or
  - (3) clarify an issue of general importance in the administration of justice; and
- (f) The petition shall include or have a copy of the order of the Trial Court attached thereto.

#### **154.7. Joint, Consolidated, and Cross Appeals**

154.7-1. *Joint or Consolidated Appeals.* When two (2) or more parties are entitled to appeal from a Trial Court judgment or order, and their interests make joinder practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal as a single Appellant.

- (a) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.
- (b) If the persons do not file a joint appeal or elect to proceed as a single Appellant, or if their interests are such as to make joinder impractical, the person shall proceed as Appellant and co-Appellant, with each co-Appellant to have the same procedural rights and obligations as the Appellant. The Appellant shall be the person who filed first.

154.7-2. *Cross Appeal.* A Respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10) business days after the receipt of the notice of appeal, whichever is later. The Respondent shall be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an Appellant under these Rules.

**154.8. Service, Filing and Certification**

154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The filing party shall supply the Clerk with the original papers and three (3) copies. The filing party shall also provide one (1) copy of the papers for each opposing party or party's attorney. Filing shall be complete by the close of business on the day which the filing is due. The following methods of filing shall be used, in order of preference:

- (a) *In Person*: A party to a pending case, or the party's attorney or authorized Agent may file papers in person before the Clerk.
- (b) *Electronic*: A party to a pending case may file papers electronically to the electronic address, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying these Rules. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party.
- (c) *By Mail*: A party to a pending case may file papers by ~~certified~~ U.S. or private mail with the ability to track the delivery~~return receipt~~, with cover documents to be addressed to the Clerk. Filing shall not be completed upon mailing, but only upon receipt.
  - (1) ~~Certified mail shall include the f~~Filing of papers is also permitted through the Tribal certified interoffice mail system.

**154.8-2. Proof of Service.**

- (a) Upon demand by a party or the Appellate Clerk, a party filing documents shall provide A paper presented for filing shall contain either one of the following:
  - (1) Proof of delivery of the filing in question;
  - (1)(2) an acknowledgment of service by the person served; or
  - (2)(3) proof of service consisting of a statement by the person who made service certifying:
    - (A) the date and manner of service;
    - (B) the names of the persons served;
    - (C) the mail or electronic addresses, facsimile numbers of the persons served, or the addresses of the places of delivery, as appropriate for the manner of service; and
    - (D) if served electronically, a writing by the person being served consenting to service by electronic means.

154.8.3. *Service of All Papers Required.* A party shall, at or before the time of filing a paper, serve a copy on all other parties to the appeal. Any party may be served by electronic means, if such party consents in writing to service by electronic means. Service on a party represented by an attorney shall be made on the party's attorney.

154.8-4. *Certification of the Record.* Upon ~~receipt~~ acceptance of the ~~Notice of Appeal and Proof of Service~~, the Clerk shall, as soon as practical, notify the Trial Court clerk or original hearing body that an appeal has been filed, and request ~~Within 30 days of being noticed, the Trial Court clerk shall~~ shall to prepare, ~~certify~~ and file with the Appellate Court all papers comprising the record of the case appealed within 30 days of being noticed. ~~The~~ Upon Certification of the Record by the Clerk it shall be served on all parties. The time for filing and certifying the record may be extended for good cause by the Chief Judge upon a written request from the Trial Court clerk.

- (a) The record of the case shall consist of all papers filed with the Trial Court, exhibits, ~~the a~~ transcript or audio recording of the proceedings, and the final decision of the Trial Court or original hearing body.

### **154.9. Time Computation**

154.9-1. *Deadline Computation.* Time lines are determined by designating the day after notice is received as day one. Computation involving calendar days shall include intermediate Tribally observed holidays and weekend days, provided that if the last day of the period falls on a Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date. Computation involving business days shall not include intermediate weekend days or Tribally observed holidays. All papers due to be filed with the Clerk are due prior to the close of business on the last day of the time period.

- (a) If notice is mailed, then three (3) days shall be added to the time line in order to determine the due date.

154.9-2. *Extension of Time.* For good cause, the Court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court shall not extend the time to file:

- (a) a notice of appeal; or  
(b) a petition for permission to appeal.

154.9-3. *Time to Complete.* Unless time is extended by the Court with the knowledge of the parties, the time from the filing of the Notice of Appeal to the completion and entry of the final written decision shall not exceed one hundred and ~~eighty~~ twenty (~~128~~ 120) days.

### **154.10. Motions**

154.10-1. *Application for Relief.* An application for an order or other relief in a docketed case shall be made by motion unless these Rules prescribe another form. A motion shall be in writing unless the Court permits otherwise. The moving party shall file all motions with the Clerk and serve opposing parties as provided in 154.8.

154.10-2. *Contents of a Motion.* A motion shall state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

- (a) Any affidavit or other paper necessary to support a motion shall be served and filed with the motion. An affidavit shall contain only factual information, not legal argument. A motion seeking substantive relief shall include a copy of the Trial Court's opinion as a separate exhibit.

154.10-3. *Response to a Motion.* Any party may file a response to a motion, in accordance with 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the Court shortens or extends the time.

154.10-4. *Motion for a Procedural Order.* The Court may act on a motion for a procedural order at any time without awaiting a response. A party adversely affected by the Court's action may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of notice of the decision.

154.10-5. *Motion for Voluntary Dismissal.* An appellant may dismiss an appeal by filing a motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial Court. The dismissal of an appeal shall not affect the status of a cross-appeal or the right of a respondent to file a cross appeal.

154.10-6. *Form.* Motions shall be typed, legible and include the case caption. Every motion shall:

- (a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the action, the docket number (if known) and a designation as to the purpose or type of motion.
- (b) Contain the names of all parties to the action.
- (c) Be organized in sections containing a clear designation, which shall include, but is not limited to:
  - (1) The facts, events or occurrences which make a specific motion for relief necessary;
  - (2) The specific relief requested by the moving party;
  - (3) The applicable law or laws to the motion at hand including citations; and
  - (4) The legal reasons the relief should be granted.
- (d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more than two (2) lines may be indented and single-spaced. Headings and footings may be single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers may be placed in the margins, but no other text shall appear there.
- (e) Be typed in a plain, roman style, although italics or boldface may be used for emphasis. Case names shall be italicized or underlined.
- (f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.

#### **154.11. Briefs**

154.11-1. *Briefs Generally.* Briefs shall be used by the Court to aid the Court in its consideration of the issues presented.

- (a) *Form.* The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's attorney, if represented. The front cover of a brief shall contain:
  - (1) the number of the case centered at the top;
  - (2) the name of the court;
  - (3) the title of the case;
  - (4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;
  - (5) the title of the brief, identifying the party or parties for whom the brief is filed; and
  - (6) the name, office address, and telephone number of the attorney representing the party for whom the brief is filed, if represented.
- (b) *Length.* The brief shall be no more than twenty (20) pages, one (1) sided, in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.
- (c) *Filing.* When a party is represented by an attorney, only the attorney shall file briefs and pleadings. The individual shall not file on his or her own unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and one (1) copy to all parties to the appeal.
- (d) *Time to Serve and File a Brief.* The Appellant shall serve on the Respondent and file with the Clerk a brief within twenty (20) days after acceptance of the Certification of the Record. ~~Notice of Appeal is filed.~~ The Respondent's brief shall be filed with the Clerk within twenty (20) days of receipt of the Appellant's brief. A reply brief, if necessary, shall be filed within fourteen (14) days of receipt of Respondent's brief.

The Court may, on its own, order different time lines for any party's time to file a brief.

- (e) *Consequence of Failure to File.* If an Appellant fails to file a brief within the time provided by this Rule, or within an extended time, a Respondent may move to dismiss the appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless the Court grants permission.

154.11-2. *Appellant's Brief.* The Appellant's brief shall contain, under appropriate headings and in the order indicated:

(a) *Content:*

- (1) a table of contents, with page references;
- (2) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;
- (3) a jurisdictional statement, including:
  - (A) the basis for Trial Court's subject-matter jurisdiction;
  - (B) the basis for the Court of Appeals' jurisdiction;
  - (C) the filing dates establishing the timeliness of the appeal; and
  - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Court of Appeals' jurisdiction on some other basis;
- (4) a statement of the issues presented for review;
- (5) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
- (6) a statement of facts relevant to the issues submitted for review with appropriate references to the record;
- (7) a summary of the argument, which shall contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which shall not merely repeat the argument headings;
- (8) the argument, which shall contain:
  - (A) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and
  - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
- (9) a short conclusion stating the precise relief sought;
- (10) a short appendix to include:
  - (A) relevant docket entries in the Trial Court;
  - (B) limited portions of the record essential to an understanding of the issues raised;
  - (C) the judgment, order, or decision in question; and
  - (D) other parts of the record to which the parties wish to direct the Court's attention; and
- (11) where the record is required by law to be confidential, reference to individuals shall be by initials rather than by names.

154.11-3. *Respondent's Brief.* The Respondent's brief shall conform to the same requirements as 154.11-2 (Appellant's Brief).

- (a) The Respondent's brief shall address each issue and argument presented by the Appellant's brief.

- (b) The Respondent's brief may present additional issues, with the Respondent's positions and arguments on such issues.

154.11-4. *Reply Brief.* The Appellant may file a brief in reply to the Respondent's brief. Unless the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15) pages, one (1) sided, in length.

154.11-5. *Amicus Curiae Brief.* A person who is not a party to a case but has some interest in the outcome of the case may, upon timely motion and with permission of the Court, submit an amicus curiae brief in support of a party to the action. The Court may, on its own motion, request amicus participation from appropriate individuals or organizations.

- (a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's Brief), except as provided in the following:

- (1) Amicus curiae shall file his or her brief no later than seven (7) days after the brief of the party being supported is filed. Amicus curiae that do not support either party shall file his or her brief no later than seven (7) days after the Appellant's or Respondent's brief is filed. The Court may grant leave for later filing, specifying the time within which an opposing party shall answer.

154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving more than one (1) Appellant or Respondent, including consolidated cases, any number of Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of another's brief. Parties may also join in reply briefs.

## **154.12. Oral Argument**

154.12-1. *Oral Arguments.* The Court may order oral argument when issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed. The Court shall direct that an appeal be submitted on briefs only, if:

- (a) The appeal is frivolous;
- (b) The dispositive issue or issues have been authoritatively decided; or
- (c) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

154.12-2. *Notice.* The Clerk shall provide notice, of at least ten (10) business days, to all parties when oral arguments are scheduled. The notice shall list the location of the oral argument and the time allowed for each side. The Court shall determine the amount of time for oral arguments. A motion to postpone the argument or to extend the argument timeframe shall be filed at least five (5) business days before the hearing date.

154.12-3. *Citation of Authorities at Oral Argument.* Unless permitted by the Court, parties may not cite or discuss a case at an oral argument unless the case has been cited in one (1) of the briefs.

## **154.13. Entry and Form of Judgment**

154.13-1. *Entry.* A judgment is entered when it is noted on the docket. The Clerk shall prepare, sign, and enter the judgment after receiving the Court's opinion.

- (a) The decision and opinion of the Court shall be by a majority vote.
- (b) The Court may:
  - (1) Reverse, affirm, or modify the judgment or order as to any or all parties;

- (2) Remand the matter to the Trial Court and order a new trial on any or all issues presented; the order remanding a case shall contain specific instructions for the Trial Court;
  - (3) If the appeal is from a part of a judgment or order, the Court may reverse, affirm or modify as to the part which is appealed;
  - (4) Direct the entry of an appropriate judgment or order; or
  - (5) Require such other action or further proceeding as may be appropriate to each individual action.
- (c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of the decision and opinion as entered.
- 154.13-2. *Form.* All decisions of the Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no later than sixty (60) days after the conclusion of oral argument or after the expiration of time to file a *Reply Brief* or *Response Brief* if no oral argument is held.
- (a) The time for issuing a decision and opinion may be extended provided all parties are notified of the extension in writing. The notice of extension shall include the cause for and length of such extension.

#### **154.14. Interest of Judgments**

154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Trial Court's judgment was entered. If the Court modifies or reverses a judgment with a direction that a money judgment be entered in the Trial Court, the mandate shall contain instructions about the allowance of interest.

#### **154.15. Penalties**

154.15-1. *Frivolous Appeals.* If an appeal or cross-appeal is found by the Court to be frivolous, the Court may award to the successful party costs and attorney's fees.

- (a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-Appellant's attorney, or both the (cross)-Appellant and his/her attorney jointly.
  - (1) Court costs shall be based on actual cost or defined by the Court.
- (b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the following elements are found by the Court:
  - (1) The appeal or cross appeal was filed, used, or continued in bad faith, solely for purposes of delay, harassment or injuring the opposing party; or
  - (2) The party or party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

154.15-2. *Delay.* If the Court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one (1) or more of the following to the opposing party:

- (a) Double costs;
- (b) A penalty of additional interest not exceeding ten percent (10%) on the award amount affirmed;
- (c) Damages caused by the delay; and/or
- (d) Attorney's fees.

154.15-3. *Non-Compliance with Rules.* Failure of a party to comply with a requirement of these Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but may be grounds for one (1) or more of the following:

- (a) Dismissal of the appeal;
- (b) Summary reversal of the Trial Court;
- (c) Striking of a paper, document or memorandum submitted by a party;
- (d) Imposition of a penalty or costs on a party or party's attorney; and/or
- (e) Other action as the Court considers appropriate.

#### **154.16. Substitution of Parties**

154.16-1. *Death of a Party.* Death of a party does not automatically end a party's right to appeal.

- (a) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion shall be served on the representative. If the Decedent has no representative, any party may suggest the death on the record, and the Court may then direct appropriate proceedings.
- (b) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative, or if there is no personal representative, the decedent's attorney of record, may file a notice of appeal within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).
- (c) *Before Notice of Appeal Is Filed-Potential Respondent.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the Trial Court, but before a notice of appeal is filed, an Appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any reason other than death, the procedure set in 154.16-1(a) applies.

#### **154.17. Costs**

154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

- (a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;
- (b) Against the respondent when the judgment or order is reversed.

154.17-2. *Allowable Costs.* Allowable costs shall include:

- (a) Cost of printing and assembling the number of copies and briefs and appendices required by the Rules;
- (b) Fees charged by the Court and/or Clerk;
- (c) Cost of the preparation of the transcript of testimony of the record of appeal; and
- (d) Other costs as ordered by the Court.

154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement of ~~the~~<sup>these</sup> costs within fourteen (14) days of the filing of the decision of the Court. An opposing party may file, within eleven (11) days after service of the statement, a motion objection to the statement of costs.

End.

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Adopted BC-04-25-14-B

Handout for 12/17/14 LOC  
 111.2. Rules of Appellate  
 Procedure Amendments

**Lynn A. Franzmeier**

**From:** Lynn A. Franzmeier  
**Sent:** Friday, December 12, 2014 10:31 AM  
**To:** Brandon L. Yellowbird-Stevens; Ronald W. Hill; Jennifer A. Webster; Fawn J. Billie  
**Cc:** Rhiannon Metoxen (RMETOXE2@oneidanation.org); Danelle A. Wilson; Fawn L. Cottrell  
**Subject:** E-poll: Emergency Amendments to the Rules of Appellate Procedure  
**Attachments:** 2014 12 12 Rules of Appellate Procedure Emergency Amendments Draft 1 redline to current with analysis .pdf

**Importance:** High

Good morning-

We've received a request from Chief Appellate Judge Hill to amend the Rules of Appellate Procedure on an emergency basis so the amendments are in effect before the court opens on January 5, 2015. The OBC is having a special meeting next Friday, December 19, 2014 and we can include this item on that agenda; however, the backup is due on Monday.

I've attached an excerpt from the Chief Appellate Judge's request for your information:

*"As you can see, the proposed revisions are, in essence, for clarification as is added text, e.g. new definitions and inadvertent omissions, e.g. added reference to Initial Review of Notice of Appeal."*

*As the time for the entire LOC process to formally amend Chapter 154 cannot occur before January 5, 2015, it is respectfully requested that the changes, as submitted, be reviewed by the LOC and enacted by the OBC under its emergency powers. This would allow the new Judiciary, i.e. Tribal Court, to commence its new responsibilities, with fully consistent operational Rules, as indicated when the OBC passed the Resolutions on October 28, 2014 to reschedule the start date of the Court to January 5, 2015."*

I've attached the proposed amendments and analysis of the Rules for your consideration. Please respond with your support or opposition as soon as possible.

Fyi-I am also working on creating a Memo to the OBC outlining the need for these amendments, a Resolution and Statement of Effect.

Any questions, let me know.

Lynn A. Franzmeier, Staff Attorney  
 Legislative Reference Office  
 Oneida Tribe of Indians of Wisconsin  
 (920) 869-4417

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**From:** Brandon L. Yellowbird-Stevens  
**Sent:** Friday, December 12, 2014 2:02 PM  
**To:** Fawn J. Billie; Lynn A. Franzmeier; Ronald W. Hill; Jennifer A. Webster  
**Cc:** Rhiannon R. Metoxen; Danelle A. Wilson; Fawn L. Cottrell  
**Subject:** RE: E-poll: Emergency Amendments to the Rules of Appellate Procedure

REVISED Page 31 of 73

Support

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**From:** Fawn J. Billie  
**Sent:** Friday, December 12, 2014 1:59 PM  
**To:** Lynn A. Franzmeier; Brandon L. Yellowbird-Stevens; Ronald W. Hill; Jennifer A. Webster  
**Cc:** Rhiannon R. Metoxen; Danelle A. Wilson; Fawn L. Cottrell  
**Subject:** RE: E-poll: Emergency Amendments to the Rules of Appellate Procedure

Support Judge Hill's request.

---

**From:** Ronald W. Hill  
**Sent:** Friday, December 12, 2014 2:11 PM  
**To:** Lynn A. Franzmeier; Brandon L. Yellowbird-Stevens; Jennifer A. Webster; Fawn J. Billie  
**Cc:** Rhiannon R. Metoxen; Danelle A. Wilson; Fawn L. Cottrell  
**Subject:** Re: E-poll: Emergency Amendments to the Rules of Appellate Procedure

Support

Sent using OWA for iPhone

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**From:** Jennifer A. Webster  
**Sent:** Friday, December 12, 2014 2:03 PM  
**To:** Lynn A. Franzmeier; Brandon L. Yellowbird-Stevens; Ronald W. Hill; Fawn J. Billie  
**Cc:** Rhiannon R. Metoxen; Danelle A. Wilson; Fawn L. Cottrell  
**Subject:** RE: E-poll: Emergency Amendments to the Rules of Appellate Procedure

Support.



# Legislative Operating Committee

## December 17, 2014

# Pow-wow Committee Bylaws

**Submission Date:** October 1, 2014

☐ Public Meeting:  
☐ Emergency Enacted:

**LOC Sponsor:** Fawn Billie

**Summary:** *The Pow-wow Committee has requested additions to the Committee bylaws which address qualifications for serving on the committee. First preference would be given to any citizen who appears on the official roll of the Tribe, with second preference to any citizen who appears to any official federally recognized Native American rolls. The qualifications would also be revised so that Committee members must have experience coordinating events. Additional amendments require Committee members to follow the Tribe's Code of Ethics and add that failure to attend 3 consecutive meetings with unexcused absences, or 5 total unexcused absences within a term are grounds for removal.*

**10/01/14 LOC:** Motion by Jennifer Webster to add Pow-wow Committee Bylaws to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Fawn Billie will be the sponsor.*

### Next Steps:

- LOC to review the draft bylaws and analysis, make any changes and, if ready, forward to the Pow-wow Committee for approval.

Oneida Pow-Wow Committee By-laws

Analysis by the Legislative Reference Office					
Entity	Pow-wow Committee ("the Committee")				
Requestor	Rosa Laster	Drafter	Lynn Franzmeier	Analyst	Taniquelle J Thurner
Reason for Request	The Pow-wow Committee requested amendments to the bylaws that would add qualifications and expectations for membership.				
Members	9	Stipends	\$50 for 1 meeting/month	Elected/ Appointed	Appointed
Authority	Established/officially recognized as an entity by OBC Resolution 1990, and through amending the bylaws in 1997, 1999, 2005, and 2010. The Committee has the authority to hire personnel to conduct a pow-wow, such as emcees, arena directors, tabulators, and judges for drum and dance.				
Hearing Authority	None				

**Proposed Amendments**

- **Added Qualifications.** The amendments add that in order to be appointed to serve on the Committee, a person must:
  - Be a member of a federally-recognized Indian Tribe; and qualified Oneida applicants will be appointed over other qualified applicants.
  - Have Pow-wow knowledge or experience in coordinating a community event. Pow-wow knowledge is demonstrated through experience coordinating a Pow-wow or participating in a Pow-wow. [1-4(b) and (c)]
- **Recommending Termination of Appointment.** The amendments require the Committee to recommend to the Tribal Chair that a member's appointment be terminated in two situations:
  - Failure to adhere to the oath of office, including the duty to uphold the Tribe's laws, or
  - Three unexcused absences for three consecutive meetings; or five unexcused absences within a term. [1-4(e)]

This does not mean that a member will automatically have his or her appointment terminated for either of those violations - appointed members serve at the discretion of the Oneida Business Committee (OBC) and can only have their appointments terminated if the Tribal Chair then makes a recommendation to terminate the appointment and a 2/3 majority vote of the entire OBC approves it. [See the Comprehensive Policy Governing Boards, Committees and Commissions (Comprehensive Policy), section 6-5.]

Various changes were made to ensure compliance with the Comprehensive Policy and consistent drafting style, to make clarifications, and to improve flow. The main changes include:

- Adding a "Purpose" statement. Unlike the bylaws for all other appointed Tribal entities, the current bylaws do not identify a purpose, goals, or authorities for the Committee. New language adds that the purpose of the Committee is to coordinate and manage annual Pow-wows in order to encourage people to enjoy and participate in social activities, including dancing, singing, visiting, renewing old friendships and making new ones. [1-6]

- Clarifying that meeting stipends are capped at \$50 per month, not \$50 per meeting, and can only be received if the meeting establishes quorum for at least one hour and the member was present for at least one hour of the established quorum. [1-5]
- Although the current bylaws state that the Committee Chair is an *ex officio* member of all subcommittees [2-2(b)]; the bylaws do not explain how subcommittees are created. The amendments add that the Chair may create subcommittees when necessary, with Committee approval. [2-7]
- Because the Comprehensive Policy [8-4(c)] requires bylaws to state how notice of [a meeting] agenda, documents, and minutes will be disbursed to members, a new provision adds that for regular meetings the notice, meeting agenda and materials must be forwarded by the Chair with the assistance of the Committee's Secretary. [3-1]
- The amendments clarify that the Committee can replace an officer with a different Committee member even if the current officer's term has not expired. [2-6]
- The amendments clarify that the Committee's Chair, Vice-Chair and Treasurer are authorized to sign and execute contracts or other instruments, "as needed" - they are not all required to sign every instrument. [2-2(c), 2-3(b) and 2-4(b)].
- The bylaws still state that Committee members are compensated at \$25 an hour during a pow-wow; the amendments clarify that the members are only compensated that amount for services they provide during the pow-wow. [1-7]
- The amendments clarify that the Committee can hire personnel "to conduct a pow-wow," not "for the benefit of the Committee". [2-8]
- In 2010, the bylaws were amended to reflect that appointed members are subject to termination of appointment, not removal. However one reference to the Removal Law appears to have been overlooked. The amendments update that one provision. [2.6(b)(4)]

### Miscellaneous

A public meeting is not required for bylaws. Except as noted in this analysis, these Bylaws comply with the requirements for bylaws set out in Section 8-4 of the Comprehensive Policy.

### Considerations

The following are items the LOC may want to consider:

- The bylaws require the Committee to recommend termination of appointment in two situations. However, the bylaws do not identify:
  - Any specific person/officer who is responsible for making this recommendation,
  - Any sort of process, method or timeline doing so, or
  - How an absence can be excused – it would be helpful to include this in the bylaws if unexcused absences may now result in termination of appointment.
- The bylaws do not state whether the Committee chair only votes in case of a tie. By comparison, both the Environmental Resource Board (ERB) and Veterans Affairs Committee (ONVAC) bylaws only permit the entity's chair to vote in case of a tie; but some other appointed entities are also silent on the issue. This is a policy call, but if the intent is to only let the Chair to vote in a tie; this should be identified in the bylaws.
- The bylaws do not state when terms on the Committee run. By comparison, the Anna John Resident Centered Care Community Bylaws, the ERB bylaws, the Library Board Bylaws, and the ONVAC bylaws all state that their terms are staggered, and the Pardon

and Forgiveness Screening Committee bylaws state that the terms run consistent with the OBC terms of office.

- The length of officer terms are set “as determined by the Committee” and if the Committee does not establish terms, then the members remain in their officer positions for the remainder of their term as a Committee member. [2-6] This is different from the bylaws for all other appointed Tribal entities, which all identify a specific length for a term of office in their bylaws<sup>1</sup>.
- The Comprehensive Policy requires bylaws to list “how Emergency meetings shall be called and noticed.” [8-4(c)(2)]. These bylaws do not address Emergency meetings, although they do identify how special meetings are addressed/noticed. [3-2 and 3-3]
- Section 5-2(c) of the Comprehensive Policy states that: “A resignation is effective upon:
  - 1. Deliverance of a letter to the entity, or
  - 2. Acceptance by motion of the entity of a verbal resignation.

The bylaws repeat those requirements; which is not necessary because the provision in the Comprehensive Policy already applies. However, the bylaws add that a resignation is effective upon acceptance or delivery “*unless a later effective date is specified.*” [1-4(d)(2)(A)]. The Comprehensive Policy does not authorize a resignation to become effective upon a specified later date, and this appears to create a conflict.

#### Ancillary Issue

Although this does not immediately relate to these bylaws, one issue was identified during this analysis that relates to the Comprehensive Policy. Section 5-2 of that Policy identifies when vacancies become effective, depending on whether the vacancy occurred due to end of term, removal, resignation, new positions created, or interim positions. However, it does not identify when a termination of appointment becomes effective. Section 5-3 also does not address termination of appointment in the minimum notice guidelines for the Secretary for sending notice of vacancy to entities, even though 5-5 identifies when the Tribal Secretary’s Office is required to post notice of vacancies, and that section includes termination of appointment. It may be beneficial to identify those in those sections of the Comprehensive Policy.

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#### Oneida Pow-~~W~~wow Committee By-laws

##### Article I. Authority

- 1-1. *Name.* The name of this committee shall be the Oneida Pow-~~W~~wow Committee, hereinafter referred to as “Committee”.
- 1-2. *Authority.* This Committee was ~~created~~ officially recognized by the Oneida Business Committee through adoption of resolution BC-04-13-90-B and by-laws were approved by the Oneida Business Committee on October 15, 1997, and amended on February 3, 1999, February 23, 2005, and June 23, 2010 and.
- 1-3. *Office.*
  - (1) The official mailing address of ~~this entity~~ the Committee shall be:  
Oneida Pow-~~W~~wow Committee  
P.O. Box 365  
Oneida, WI 54155

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<sup>1</sup> ONVAC, SEOTS, Anna John, Arts Board, Police Commission and ERB all have 1-year terms. Personnel Commission Officers serve 2-year terms. Officers on the Library Board and Pardon and Forgiveness Screening Committee remain as officers for their entire term serving on those entities.

The physical meeting place shall be determined at the first meeting of the Committee and may change from time to time as determined by the Committee but shall be within the Reservation boundaries.

1-4. *Membership.*

(a) *Number of Members.* The Committee shall be made up of nine (9) members with voting powers.

(1) The Committee shall in no event be comprised of less than five (5) members.

(2) Each member shall hold office until his or her term expires, until his or her resignation, or until his or her appointment is terminated in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.

(b) *Qualifications.* In order to be appointed to the Committee, an individual shall:

(1) Be a member of a federally-recognized Indian tribe; and

(2) Have Pow-wow knowledge, as demonstrated through experience coordinating a Pow-wow or participating in a Pow-wow; or have experience in coordinating a community event.

(c) *How Elected or Appointed.* Each Committee member shall be appointed in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions to serve a three (3) year term. Qualified applicants who are members of the Oneida Tribe of Indians of Wisconsin shall be appointed to the Committee over other qualified applicants. Committee members shall not be limited in the number of terms that can be served consecutively or otherwise.

(d) *Vacancies.*

(1) *Filling of Vacancies, Generally.* If a vacancy occurs on the Committee, ~~and based on the needs of the Committee,~~ the Committee ~~may~~shall provide written notice to the Oneida Tribal Secretary so that the Oneida Business Committee may fill the vacancy; however, the filling of a vacancy may be timed to correspond with the activities and the needs of the Committee. ~~The Committee is allowed to~~may make recommendations as to possible candidates.

(2) *Resignation.* A member may resign at any time verbally or by delivering written notice to the Committee or upon the acceptance by motion of the Committee of a verbal resignation.

(A) A resignation is effective upon acceptance by motion or delivery of notice, unless a later effective date is specified.

(B) *Filling of Vacancies if Resignation is Deferred.* A vacancy that may occur at a specific later date by reason of resignation may be filled before the vacancy occurs but the new member cannot take office until the vacancy occurs.

(3) *Terms of Replacement Member.* A replacement member shall hold office through the unexpired portion of the term of the member whom he or she has replaced or until his or her earlier exit.

(4) *Termination of Appointment.* A member's appointment may be terminated in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.

~~(5) *Resignation.* A member may resign at any time by delivering written notice to the Committee or upon the acceptance by motion of the~~

~~Committee of a verbal resignation. A resignation is effective upon delivery of notice unless a later effective date is specified.~~

(e) Recommendation for Termination of Appointment. The Committee shall recommend to the Chairperson of the Tribe that a member's appointment be terminated upon any of the following:

(1) A member's failure to adhere to his or her Oath of Office, including the duty to uphold the laws of the Tribe.

(2) A member receives unexcused absences for three (3) consecutive meetings or receives five (5) unexcused absences within his or her term.

1-5. Meeting Stipends. Dependent upon available budgeted funds, ~~the~~each Committee member shall be compensated at a rate of no more than fifty dollars (\$50.00) per month when at least one (1) meeting when is conducted, a quorum is established in accordance with these By laws and provided that the meeting has established a quorum for a minimum of one (1) hour and the Committee member collecting the stipend was present for at least one (1) hour of the established quorum, in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.

1-6. Purpose. The purpose of the Committee is to is to coordinate and manage annual Pow-wows in order to encourage people to enjoy and participate in social activities, including dancing, singing, visiting, renewing old friendships and making new ones.

1-6.7. Pow-Wwow Activities. The Committee shall, at a duly called meeting by motion and recorded within the minutes, identify each member, the services he or she shall provide during each Pow-Wwow and the specific dates and times during which the member shall perform such services. A member shall be compensated twenty-five dollars (\$25.00) per hour for services he or she provides during each Pow-wow, not to exceed two hundred dollars (\$200.00) per day, contingent upon available budgeted funds.

## Article II. Officers.

2-1. Officers. The officers of the Committee shall consist of a Chairperson, Vice-Chairperson, Treasurer and Secretary, ~~each of whom shall be elected by Committee members at a duly called meeting.~~ The Committee may appoint such other officers and assistant officers as it deems necessary.

2-2. Chairperson Duties. The responsibility, duties and powers of the Chairperson of the Committee are as follows:

(a) Preside at all meetings of the Committee.

(b) Shall be an ex officio member of all subcommittees of the Committee, may call special meetings, and keep the Committee informed as to the business of the Committee and Pow-Wwows.

(c) Sign and execute all contracts or other instruments which the Committee has authorized, as needed.

(d) The Chairperson and the Secretary shall submit reports to the Oneida Business Committee for publication in the General Tribal Council annual and semi-annual reports, and shall submit quarterly reports to the Oneida Business Committee.

2-3. Vice-Chairperson Duties. The Vice-Chairperson shall:

(a) In the absence of the Chairperson, ~~shall~~ conduct meetings of the Committee.

(b) Sign and execute all contracts or other instruments which the Committee has authorized, as needed.

2-4. Treasurer Duties. The responsibilities, duties and powers of the Treasurer are as follows:

(a) Be aware of and have primary knowledge of all funds and securities of the

- Committee and deposit of such funds.
- (b) Sign and execute all contracts or other instruments which the Committee has authorized, as needed.
- (c) Report on the condition of the finances of the Committee at each regular meeting and at other times as required or requested.
- 2-5 *Secretary Duties.* The responsibilities, duties and powers of the Secretary are as follows:
- (a) Keep minutes of the Committee meetings in an appropriate format.
- (b) ~~Providing~~Provide notice of regular and special meetings of the Committee.
- (c) Act as custodian of the records.
- (d) Attest to the execution of instruments on behalf of the Committee by the proper officer.
- (e) Attend to all correspondence and present to the Committee all official communications received by the ~~Secretary~~Committee.
- (f) Along with the Chairperson, submit reports to the Oneida Business Committee for publication in the General Tribal Council annual and semi-annual reports, and ~~shall~~ submit quarterly reports to the Oneida Business Committee.
- 2-6. *How Chosen and Length of Term.* The officers of the Committee shall be appointed by the Committee for a term as determined by the Committee.
- ~~(a) If no term is specified, they shall hold office until their term as Committee member expires.~~
- ~~(b)(a) A vacancy of any officer shall be filled by the Committee for the unexpired term.~~
- ~~(c)(b)~~ Each officer shall hold ~~their~~his or her office until:
- (1) his or her term as a Committee member expires, if no term is specified; or
- (2) a successor has been appointed by the Committee, whether the current officer's term as officer has expired; or
- (3) ~~, or until~~ the member resigns; or
- (4) the member is removed ~~has his or her appointment terminated~~ in the manner set out in the ~~Oneida Removal Law~~Comprehensive Policy Governing Boards, Committees and Commissions.
- ~~(d)(c) A vacancy of any officer shall be filled by the Committee for the unexpired term.~~
- (d) The designation of a term shall not grant to the officer any vested or contractual rights in serving the term.
- 2-7. Subcommittees. Subcommittees shall be created when necessary by the Chairperson with the approval of the Committee. A subcommittee shall serve until the duties it has been assigned are discharged or a final report is given.
- ~~2-7.8.~~ *Personnel.* The Committee has the authority, dependent upon budgeted funds, to hire personnel ~~for the benefit of the Committee~~to conduct a Pow-wow, such as: emcees, arena director, tabulators, and judges for drum and dance.

### Article III. Meetings

- 3-1. *Regular Meetings.* Regular meetings shall be determined by the Committee. The regular meeting time, place and agenda shall be determined at a regular meeting. If no alternate designation is made by the Committee, the regular meetings shall be the last Tuesday of every month. Notice of meeting location, agenda and materials shall be forwarded by the Chairperson with the assistance of the Secretary. Meetings shall be run in accordance with Robert's Rules of Order.
- 3-2. *Special Meetings.* Special meetings of the Committee may be called by the Chairperson or upon written request of any two (2) members. The Chairperson ~~may~~shall designate a

time and place for holding a special meeting.

3-3. *Notice of Special Meeting.* Notice of a special meeting shall be given at least forty-eight (48) hours prior to the date set for any such meeting. Notice may be communicated in person, by facsimile or other wire or wireless communication, or by mail.

3-4. *Quorum.* Five (5) of the Committee members shall constitute a quorum for transaction of business, which shall include the Chairperson or Vice-Chairperson.

3-5. *Order of Business.* The regular meetings of the Committee shall follow the order of business at set out herein:

(a) Call to Order

(b) Roll Call

(c) Approving of Previous Meeting Minutes

(d) ~~Standing and Special C~~Subcommittee Reports

(e) Old Business

(f) New Business

(g) Adjournment

3-6. *Voting.* ~~The affirmative vote of the majority of the Committee~~Voting shall be in accordance with the simple majority vote of Board members present at a duly called meeting ~~at which a quorum is present when the vote is taken shall be the act of the Committee.~~

#### Article IV Reporting.

4-1. *Format.* Agenda items shall be in an identified format.

4-2. *Minutes.* Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the Committee.

4-3. *Attachments.* Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.

4-4. *Reporting.* The Chairperson shall report to the Oneida Business Committee Liaison, if one ~~(+)~~ is designated.

#### Article V. Amendments.

5-1. *Amendments to By-laws.* Amendments shall be made to these By-laws at a regular meeting of the Committee provided that written notice of the proposed amendments was made at a prior regular meeting. The Committee may amend ~~or repeal~~ the By-laws by the affirmative vote of the majority of the members. Amendments are effective upon adoption of the Committee and approval by the Oneida Business Committee.

#### Article VI. Contracting and Accounting

6-1. *Budgets.* The Chairman and Treasurer of the Committee shall oversee the Pow-~~W~~wow budgets and have sign-off authority according to the accounting procedures of the Tribe.

6-2. *Contracts.* The Committee may authorize the Chairperson, Vice-Chairperson or Treasurer to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Committee, and such authority may be general to specific instances within the purpose for which this Committee is formed. Any contract over ten thousand dollars (\$10,000.00) ~~must~~shall be approved by vote of the Committee.

6-3. *Checks, Appropriations and Other Orders of Payment.* All checks and other order of payment shall follow the accounting procedures designated by the Tribe. All appropriation requests shall be prepared by the Treasurer of the Committee.

6-4. *Deposits.* All funds of the Committee not otherwise obligated, shall be deposited back into the Pow-~~W~~wow budget. The Committee shall adopt policies and procedures for handling cash, accounting and record keeping for and during all Pow-~~W~~wows.

6-5. *Books and Records.* The Committee's books and records shall be maintained by the Chairman and Treasurer of the Committee and shall be available for examination by any Committee member, ~~officer~~ or any member of the Oneida Business Committee.

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These By-laws, as amended and revised, are hereby attested to as adopted by the Pow-wow Committee at a duly called meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lloyd E. Powless, Jr. Chairperson  
Oneida Pow-wow Committee

and approved by the Oneida Business Committee at a duly called meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lisa Summers, Tribal Secretary  
Oneida Business Committee



# Legislative Operating Committee

## December 17, 2014

### Children's Code

**Submission Date:** September 17, 2014

<input type="checkbox"/> Public Meeting: <input type="checkbox"/> Emergency Enacted:
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**LOC Sponsor:** Fawn Billie

**Summary:** *This item was carried over into the current term by the LOC. The proposal seeks to develop a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The proposal seeks establishment of a Child Welfare Office and the Oneida Child Protective Board, and would address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.*

**09/17/14 LOC:** Motion by Fawn Billie to add the Children's Code to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

*Note: Fawn Billie will be the sponsor.*

**Next Steps:**

- Review the memo from the sponsor regarding the Children's Code and direct whether a fiscal analysis should be prepared.

# Oneida Tribe of Indians of Wisconsin

**Legislative Reference Office**

P.O. Box 365

Oneida, WI 54155

(920) 869-4376

(800) 236-2214

<http://oneida-nsn.gov/LOC>

**Committee Members**

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

Jennifer Webster, Councilmember

**Memorandum**

**TO:** Legislative Operating Committee

**FROM:** Fawn Billie, LOC Member

**DATE:** December 6, 2014

**RE:** Children's Code

---

This memorandum is being submitted to request action from the LOC in regards to the Children's Code. The proposed Children's Code would greatly broaden the Tribe's exercise of jurisdictional authority, and the appropriate infrastructure must be created and put in place before the proposed law could go into effect.

Because there is such a substantial amount of work that must be done in advance, it appears that the most appropriate next step would be to request a fiscal analysis for this proposal so that the LOC can see how much money will be needed to get the necessary infrastructure in place. This information will help us determine how (or whether) to move forward with the drafting of the proposal.

**Requested Action:** Direct that a fiscal analysis be prepared for the Children's Code – and set an appropriate deadline for the fiscal analysis - so that the LOC can fully understand the potential financial impact of this proposal before proceeding.



# Legislative Operating Committee

## December 17, 2014

### Leasing Law

**Submission Date:** September 17, 2014

<input type="checkbox"/> Public Meeting: <input type="checkbox"/> Emergency Enacted:
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**LOC Sponsor:** Tehassi Hill

**Summary:** *This item was carried over into the current term by the LOC. Development of a new law would allow the Tribe to approve surface leases at their discretion, instead of the Secretary of Interior, so long as the Secretary of Interior has approved Tribal surface lease regulations.*

**09/17/14 LOC:** Motion by Tehassi Hill to add the Leasing Law to the Active Files List with Tehassi Hill as sponsor; seconded by Fawn Billie. Motion carried unanimously.

**Next Steps:**

- LOC to review the draft law, direct any changes and forward for a legislative and fiscal analysis.

## Chapter 65 LEASING

65.1. Purpose and Policy  
65.2. Adoption, Amendment, Repeal  
65.3. Definitions  
65.4. General Provisions  
65.5. Lease and Lease Document Requirements  
65.6. Residential Leases

65.7. Agricultural Leases  
65.8. Business Leases  
65.9. Environmental and Cultural Reviews  
65.10. Lease Management  
65.11. Enforcement  
65.12. Appeals

### 65.1. Purpose and Policy

65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe's authority to issue, review, approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) by establishing a process under which the Tribe will be able to approve leases on Tribal trust land without additional approval of the Secretary of the Interior.

65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk to the Tribe.

### 65.2. Adoption, Amendment, Repeal

65.2-1. This Law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_ and shall take effect thirty (30) days after approval by the Secretary of the Interior.

65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law shall not take effect until they have been approved by the Secretary of the Interior. Minor, technical amendments may take effect upon approval by the Oneida Business Committee.

65.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

65.2-4. In the event of a conflict between a provision of this Law and a provision of another Tribal law, the provisions of this Law shall control.

(a) To the extent that this Law conflicts with any applicable federal statutes or regulations the federal statute or regulation shall control.

(b) To the extent that any lease to which this Law applies conflicts with this Law, this Law shall control.

65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 65.3. Definitions

65.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Assignment" shall mean an agreement between a lessee and an assignee whereby the assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's obligations under a lease.

(b) "Cultural Heritage Department" shall mean the Tribal entity responsible for conducting cultural reviews as required under this Law.

(c) "Cultural review" shall mean a review of the anticipated effects of a proposed lease or lease document on archaeological, cultural and/or historic resources, as defined in the Tribe's Protection and Management of Archeological & Historical Resources Law.

- (d) “Day” or “days” shall mean calendar days, unless otherwise specified.
- (e) “Environment” shall mean the natural and built environment on or near the Reservation.
- (f) “Environmental Health and Safety Division” shall mean the Tribal entity responsible for conducting environmental reviews as required under this Law.
- (g) “Environmental review” shall mean a review of the anticipated environmental effects of a proposed lease or lease document.
- (h) “Equity” shall mean the value of a property over and above the indebtedness against it, and includes tangible and intangible assets.
- (i) “Improvements” shall mean buildings, other structures, and associated infrastructure attached to the leased premises.
- (j) “Interest” shall mean an ownership right to the surface estate of Tribal land.
- (k) “Land Management” means the Division of Land Management or other Tribal entity responsible for entering into leases of Tribal land in accordance with this Law.
- (l) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the lessee is granted a right to use or occupy Tribal land, for a specified purpose and duration.
- (m) “Lease document” shall mean a lease amendment, lease assignment, sublease or encumbrance.
- (n) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- (o) “Lessee” shall mean a person or entity who has acquired a legal right to use or occupy Tribal land by a lease under this Law, or one who has the right to use or occupy a property under a lease.
- (p) “Lessor” shall mean the legal, beneficial or equitable owner of Tribal land subject to a Lease, including the Tribe, and any heir, successor, executor, administrator or assign of the Lessor.
- (q) “Performance bond” shall mean a written promise to ensure the timely performance of a lease.
- (r) “Public” shall mean a person having a personal and direct interest in any significant effect on the environment of a proposed lease, which will be presumed to be such persons who are known to own or occupy lands within one (1) mile of the site of the proposed lease, unless a person not within the category demonstrates a material and particular interest that will be impacted by a specific significant effect on the environment of a particular proposed lease.
- (s) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.
- (t) “Significant effect on the environment” shall mean a proposed lease will have, or could have, a material and demonstrable impact on the environment.
- (u) “Sublease” shall mean a written agreement by which the lessee grants to an individual or entity a right to use or occupy no greater than that held by the lessee under the lease.
- (v) “Trespass” shall mean any unauthorized occupancy, use of or action on any Tribal land.
- (w) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- (x) “Tribal fee land” shall mean the surface estate of land or any interest therein, owned by the Tribe in fee interest.
- (y) “Tribal land” shall mean Tribal fee land and Tribal trust land.

(z) “Tribal trust land” shall mean the surface estate of land or any interest therein held by the United States in trust for the Tribe; land held by the Tribe subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for a Tribal corporation chartered under Section 17 of the Indian Reorganization Act.

(aa) “Violation” shall mean a failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease.

#### **65.4. General Provisions**

65.4-1. *Applicable Land.* This Law applies to Tribal fee land and Tribal trust land.

65.4-2. *Applicable Leases.*

(a) Except as excluded in (b) below, or as contrary to applicable federal statutes and regulations, this Law shall apply to all residential, agricultural and business leases executed by the Tribe and to all actions and decisions taken in connection with those leases. Provided that, nothing herein shall be construed to affect the terms and conditions of existing leases.

(b) This Law shall not apply to mineral leases or to any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

65.4-3 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this Law.

65.4-4. All disputes over residential, agricultural and business leases shall be resolved under the laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to waive the Tribe’s sovereign immunity.

65.4-5. After the Secretary approves this Law, all leases of Tribal trust land approved and executed under this Law shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Law and reassumes responsibility for such approval.

#### **65.5. Lease and Lease Document Requirements**

65.5-1. *Information and Application.* Information on obtaining residential, agricultural or business leases or lease documents shall be available at Land Management. Individuals interested in obtaining a residential, agricultural or business lease or lease document shall submit an application to Land Management.

(a) Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease and lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding leases and lease documents.

65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the following:

(a) A description of the land or building being leased; business leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems;

(b) The effective date and term of the lease;

(c) The purpose of the lease and authorized uses of the leased premises;

- (d) The parties to the lease;
- (e) How much rent is due, when it is due, who receives it, what form(s) of payment is acceptable, and whether any late payment charges or special fees apply and the rate of interest to be charged if the lessee fails to make payments in a timely manner;
- (f) Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective and how disputes regarding adjustments will be resolved;
- (g) Due diligence requirements that apply, if any; and
- (h) Performance bond and insurance requirements that apply, if any.

65.5-3. *Improvements.* A lease shall set out requirements related to improvements, including:

- (a) whether improvements may be constructed;
- (b) ownership of improvements;
- (c) responsibility for constructing, operating, maintaining and managing improvements;
- (d) removal of improvements;
- (e) whether a lessee may develop equity in improvements and sell its interest in the lease based on the equity; and
- (f) the lessor's right of first refusal to purchase the lessee's interest, if any.

65.5-4. *Obtaining a Lease Document.* Lease documents shall be by written consent of the lessor and the lessee, unless otherwise provided herein and shall contain the effective date of the lease document.

- (a) The lease may authorize subleases only upon approval and execution from Land Management. This in no way relieves the parties from carrying out their duties under the lease.

- (b) The lease may authorize encumbrances, including leasehold mortgages, on the leasehold interest for the purpose of financing to develop and improve the premises. Approval of the encumbrance by Land Management is required.

- (c) The lease shall not authorize mortgages that encumber title to Tribal fee land or Tribal trust land.

65.5-5. *Insurance.* The lease shall set out any minimum insurance the lessee must obtain and maintain during the term of the lease.

65.5-6. *Environmental and Cultural Reviews.* Land Management shall not approve a lease until an environmental review and a cultural review, as required under 65.9, have been completed. Leases approved and executed in violation of this section shall be null and void.

## **65.6. Residential Leases**

65.6-1. In addition to the requirements that apply to all leases under section 65.5 of this Law, the requirements of this section shall also apply to residential leases.

65.6-2. *Duration and Renewal.*

- (a) A residential lease shall state the effective date of the lease, however, no residential lease shall be approved more than twelve (12) months prior to the commencement of the term of the lease.

- (b) The term of the lease shall not exceed seventy-five (75) years except that any such lease may include an option to renew for up to one (1) additional term, which may not exceed seventy-five (75) years.

65.6-3. *Rental Reviews.* It is in the best interest of the Tribe to ordinarily not have rental reviews and/or adjustments on residential properties, however, the lease shall set out circumstances that would result in Land Management reviewing the rental rate and adjusting it to reflect the fair market value or an adjusted fair market value.

65.6-4. *Documentation.* The following are required for an individual to lease a residential site:

- (a) a signed lease; and
- (b) any reports, surveys and site assessments needed to comply with Tribal environmental, cultural resource and land use requirements.

## **65.7. Agricultural Leases**

65.7-1. In addition to the requirements that apply to all leases under section 65.5 of this Law, the requirements of this section shall also apply to agricultural leases. An agricultural lease shall be entered into for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

65.7-2. *Duration and Renewal.* Agricultural leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.7-3. *Land Management.* Agricultural leases shall require the lessee to manage land in accordance with any agricultural resource management plan developed by the Tribe.

## **65.8. Business Leases**

65.8-1. In addition to the requirements that apply to all leases under section 65.5 of this Law, the requirements of this section shall also apply to business leases.

65.8-2. *Duration.* Business leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.8-3. *Supporting Documents.* All applicants for business site leases shall submit the following documents to Land Management:

- (a) financial statement;
- (b) site survey and legal description, if applicable;
- (c) other documents as may be required by the business site leasing management plan.

65.8-4. *Appraisal, Local Studies.*

(a) The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of the Tribal land shall be attached to every business site lease.

(b) Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of the Tribal land shall be attached to every business site lease.

65.8-5. *Fair Annual Lease Value.*

(a) No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

- (1) The lessee is in the development period;
- (2) Land Management is providing an incentive for businesses to locate on Tribal land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such business; or
- (3) Land Management determines such action is in the best interest of the Tribe.

(b) A lease may:

(1) Be structured at a flat lease rate.

(2) Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) in gross receipts.

(3) Be structured based on a percentage of gross receipts, or based on a market indicator.

(4) Be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

(5) Be amended to allow for lease rate adjustments.

(6) Provide for periodic review. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(c) Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.

65.8-6. *Performance Bond.* If a performance bond is required under a business lease, a performance bond shall be obtained by the lessee in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

(a) The annual lease payment;

(b) The estimated development cost of improvements; and

(c) Any additional amount necessary to ensure compliance with the lease.

## **65.9. Environmental and Cultural Reviews**

65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document until an environmental review and a cultural review have been completed.

65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the request of the Environmental, Health and Safety Division on all proposed leases and lease documents. The environmental review shall be conducted in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings.

65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the Cultural Heritage Department on all proposed leases and lease documents. The cultural review shall be conducted in accordance with the permit review requirements for undertakings established in the Tribe's Protection and Management of Archeological & Historical Resources Law.

65.9-4. *Environmental and Cultural Review Completion.* The Environmental Health and Safety Division shall forward a completed environmental review, which includes the Cultural Heritage Department report, to Land Management for consideration in the approval or denial of a lease or lease document.

(a) Before approving a lease or lease document, Land Management may require any reasonable actions, as recommended within the environmental review or cultural review, be completed.

(b) The Environmental Health and Safety Division shall prepare an updated environmental review and the Cultural Heritage Department shall prepare an updated cultural review upon completion of any reasonable actions.

**65.10. Lease Management**

65.10-1. *Management Plan*. Land Management shall:

- (a) manage existing leases as well as those executed pursuant to this Law; and
- (b) institute a leasing management plan that employs sound real estate management practices, and addresses accounting, collections, monitoring, enforcement, relief, and remedies.

65.10-2. *Accounting*. Land Management shall implement an accounting system that generates invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

65.10-3. *Recording Leases and Lease Documents*. Land Management shall provide all leases and lease documents of Tribal trust land, except residential subleases, to the Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the lessee.

65.10-4. *Ownership of Records*. Records of activities taken pursuant to this Law with respect to Tribal trust land are the property of the United States and the Tribe. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Tribe.

65.10-5. *Administrative Fees*. Land Management may charge administrative fees for costs associated with issuing a lease or lease document, or conducting any other administrative transaction.

**65.11. Enforcement**

65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and the lease terms. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this Law and leases.

65.11-2. *Harmful or Threatening Activities*. If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or other party may take appropriate emergency action, which includes cancelling the lease and/or securing judicial relief.

65.11-3. *Holdovers and Trespass*. If a lessee remains in possession of a property after the expiration or cancellation of a lease, or a person occupies a residential property without Land Management's approval, Land Management shall take action to recover possession of the property; and/or pursue additional remedies, such as damages, if applicable.

65.11-4. *Defaults*. If Land Management determines a lessee is in default, Land Management shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.

65.11-5. *Penalties*. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from Land Management, and the failure to pay such amounts shall be treated as a breach of the lease.

**65.12. Appeals**

65.12-1. The lessee or interested party may appeal a determination of Land Management to the Tribe's Judiciary in accordance with the Judiciary Rules of Civil Procedure.

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End.



## Agenda Request Form

- 1) Request Date: \_\_\_\_\_
- 2) Contact Person(s): \_\_\_\_\_ Dept: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_
- 3) Agenda Title: \_\_\_\_\_
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List any supporting materials included and submitted with the Agenda Request Form

- 1) \_\_\_\_\_ 3) \_\_\_\_\_
- 2) \_\_\_\_\_ 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
\_\_\_\_\_
- 6) Please List all other departments or person(s) you have brought your concern to:  
\_\_\_\_\_
- 7) Do you consider this request urgent? ☐ Yes ☐ No  
If yes, please indicate why: \_\_\_\_\_

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: \_\_\_\_\_

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376

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MICHELLE L. MAYS

## MEMORANDUM

**TO:** Brandon Yellowbird-Stevens, Chair, Legislative Operating Committee  
**FROM:** Jo Anne House, Chief Counsel  
**DATE:** December 5, 2014  
**SUBJECT:** Amendments to Investigative Leave Policy



I am requesting the Legislative Operating Committee to consider corrective amendments to the Investigative Leave Policy. Currently, the policy is set up such that to place an employee on investigative leave the supervisor must receive approval by the Division Director AND the Human Resources Department Manager. That places two levels of independent objective review on the request to determine the need for such action.

As a result of a decision by the Oneida Appeals Commission in a recent case, the Investigative Leave Policy has been interpreted that it cannot be utilized if a "complaint" has been filed. The term has been broadened beyond that of the Oneida Personnel Policies and Procedures use of an employee complaining about another employee; i.e., a personal issue between two employees or a peer level complaint affecting the work environment. As interpreted by the Oneida Appeals Commission, any use of the term "complaint" in the investigation will trigger the prohibition located in section 4-3 of the policy.

From an initial perspective, section 4-3 would prohibit any supervisor from taking action to protect the assets and resources of the Tribe from misappropriation should there be activities identified arising out of a complaint or disciplinary action. In light of the required independent objective review, it would appear that this restriction is no longer necessary. Further, the require documentation of why an investigation, the ongoing overview by the Division Director and Human Resources Department Manager to extend the leave would offer additional levels of protection to the employee.

I am recommending the Legislative Operating Committee consider deleting section 4-3 and its prohibitions regarding use arising out of a disciplinary or complaint process. To protect the employee, I would request you consider reducing the time period the investigation may take from 30 days to 15 days. Given the nature of why an employee would be placed on investigative leave, I would presume that the supervisor would be quicker in conducting the investigation in order to avoid additional misappropriation or loss of information.

If you have further questions, please contact me.

# Oneida Tribe of Indians of Wisconsin



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

## BC Resolution 08-13-14-D Investigative Leave Policy Amendments


- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America, and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council, and
- WHEREAS,** the Investigative Leave Policy was adopted by the Oneida Business Committee by resolution BC-04-07-99-A and has never been amended, and
- WHEREAS,** the amendments to the Investigative Leave Policy enables supervisors to place employees on leave under the policy when that employee's presence could influence the outcome of the investigation, or if the employee allegedly commits an act that would prevent him/her from being eligible for employment, and
- WHEREAS,** the amendments require a supervisor to place the employee being placed on investigative leave in an alternative work assignment, if available, to avoid the loss of income for that employee during the investigation, and
- WHEREAS,** the employee is also allowed to use accrued vacation and/or personal time if an alternative work assignment is not available, and
- WHEREAS,** the employee waives his or her right to receive back pay if that employee refuses the offered alternative work assignment, and
- WHEREAS,** other amendments allow an employee to be eligible for back pay if he or she is not disciplined or terminated based on an investigation, returned to work and did not refuse the alternative work assignment, and
- WHEREAS,** additional amendments to the Policy set timelines for the investigation of thirty (30) days if the investigation is being completed internally, with the allowance of only one extension of thirty (30) days, unless the investigation is being completed by an outside agency, and
- WHEREAS,** other minor amendments were made for the purpose of clarity and formatting to ensure that it complied with the Legislative Procedures Act.

**WHEREAS,** a public meeting on the amendments to the Policy was held on December 5, 2013, in accordance with the Legislative Procedures Act.

**NOW THEREFORE BE IT RESOLVED,** that the attached amendments to the Investigative Leave Policy are hereby adopted.

#### **CERTIFICATION**

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 9 members were present at a meeting duly called, noticed and held on the 13<sup>th</sup> day of August, 2014; that the forgoing resolution was duly adopted at such meeting by a vote of 8 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

  
\_\_\_\_\_  
Lisa Summers, Tribal Secretary  
Oneida Business Committee

\*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

## Investigative Leave Policy

Article I. Purpose and Policy  
 Article II. Adoption, Amendment, Repeal  
 Article III. Definitions  
 Article IV. Scope  
 Article V. Authorization  
 Article VI. Employee Notice

Article VII. Investigator(s) and Reports  
 Article VIII. Duration  
 Article IX. Employee Responsibilities  
 Article X. Pay and Benefits  
 Article XI. Appeal  
 Article XII. Confidentiality

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### Article I. Purpose and Policy

1-1. The purpose of this Policy is to address investigative leave for employees undergoing work-related investigations.

1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to maintain confidentiality and avoid undue influence when conducting an investigation into an employee's alleged wrong doings.

### Article II. Adoption, Amendment, Repeal

2-1. This Policy was adopted by the Oneida Business Committee by resolution BC-04-07-99-A, and amended by resolution BC-08-13-14-D.

2-2. This Policy may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

2-3. Should a provision of this Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this Policy and a provision of another policy, the provisions of this Policy shall control.

2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### Article III. Definitions

3-1. This section shall govern the definitions of words and phrases used within this Policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Disciplinary action" shall mean the process as set forth in the Tribe's personnel policies for dealing with job-related behavior that does not meet expected and communicated performance standards.

(b) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to; an individual employed by any program or enterprise of the Tribe, but does not include elected or appointed officials or individuals employed by a Tribally Chartered Corporation, and political appointees. For purposes of this Policy, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(c) "Investigative leave" shall mean a temporary absence without regular job duties and without pay for the purpose of determining whether or not disciplinary action needs to be taken.

(d) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

**Article IV. Scope**

- 4-1. An employee shall be placed on investigative leave when one of the following occurs:
- (a) An investigation needs to be conducted and an employee's presence would influence the outcome.
  - (b) An employee allegedly commits an act which would preclude them from meeting employment eligibility including required Licenses, the Tribal Fidelity Bond, or Background Investigation requirements.
- 4-2. This Policy shall not be used as a form of discipline.
- 4-3. Investigative leave shall not apply to investigations regarding appeals of disciplinary actions or employee complaint investigations.

**Article V. Authorization**

- 5-1. This leave, or an extension of this leave, shall only be used when an employee's supervisor receives prior approval from the Human Resources Department Manager and:
- (a) their Division Director; or
  - (b) if there is no Division Director, the person at the highest level of the chain of command.
- 5-2. If the Human Resources Department Manager and the Division Director or his or her equivalent do not agree with placing the employee on investigative leave, then the final decision shall rest with the Human Resources Department Manager.
- 5-3. The prior approval requested in 5-1 shall be granted or denied within forty-eight (48) hours of receiving the request.
- 5-4. During the investigative leave, the employee's supervisor shall authorize an alternative work assignment if the alleged action does not preclude the employee from working elsewhere in the organization. An alternative work assignment authorized under this section shall be considered a part of the investigative leave and the employee shall continue to receive their same rate of pay.

**Article VI. Employee Notice**

- 6-1. When the employee is placed on investigative leave, the employee shall immediately receive a written notice from the employee's supervisor; the notice shall contain the following:
- (a) The specific allegation(s) being investigated;
  - (b) The employee shall be on unpaid status, unless he or she is placed in an alternative work assignment;
  - (c) The alternative work assignment, if appropriate;
  - (d) The expected length of the investigation;
  - (e) Whether or not the investigation is being forwarded to an outside agency;
  - (f) The telephone number and name of person to contact in case of questions;
  - (g) The procedures to return to work upon completion of the investigation; and
  - (h) That the employee still remains as an employee with the Tribe.
- 6-2. If the employee's investigative leave is extended past the original thirty (30) calendar days pursuant to section 8-1, the supervisor shall immediately notice the employee in writing of this extension and the reason for the extension.

**Article VII. Investigator(s) and Reports**

7-1. The employee's supervisor and/or area manager shall be responsible for completing the investigation. If the employee is one who directly reports to the Oneida Business Committee, the Tribal Equal Employment Opportunity Officer shall conduct the investigation.

7-2. If the allegations against the employee include criminal actions, or actions that may affect licensing, the investigations may be completed by an appropriate agency, including but not limited to: Police Departments, District Attorneys, Oneida Security, the Oneida Gaming Commission, and Social Services.

7-3. The person(s) conducting an investigation shall prepare a written report that shall include the findings of the investigation, and provide a copy of the written report to the employee and, if necessary the employee's supervisor.

7-4. Within forty-eight (48) hours of creating or receiving the written reports, the supervisor shall be responsible for informing the employee in writing when to return to work, and/or deciding the discipline which may be appropriate.

#### **Article VIII. Duration**

8-1. An investigative leave shall be no longer than thirty (30) calendar days, with the ability to extend one (1) time for an additional thirty (30) calendar days with a valid explanation of the reason for the extension. The extension shall be determined by the same individuals who placed the employee on investigative leave in section 5-1. However, if the investigation is forwarded to an outside agency, these timelines shall not apply.

8-2. Investigative leave shall end upon any of the following occurrences:

- (a) the expiration of the thirty (30) calendar day time limit;
- (b) the expiration of the thirty (30) calendar day extension if granted;
- (c) termination of employment based on the investigation;
- (d) the return to work when the investigation is completed prior to the expiration of the time limits given in (a) and/or (b) as officially documented by whomever is designated as the official investigative body; or
- (e) the employee chooses to resign or retire.

#### **Article IX. Employee Responsibilities**

9-1. An employee placed on investigative leave shall:

- (a) Not report to work or the worksite without prior supervisory approval;
- (b) Abide by all Tribal laws and policies, including prohibited gaming activities; and
- (c) Fully cooperate with the investigation as requested by those conducting the investigation.

#### **Article X. Pay and Benefits**

10-1. Paid leave shall not be authorized in accordance with the Tribe's personnel policies and procedures and the Oneida Nation Gaming Ordinance.

10-2. An employee placed on investigative leave shall not receive any wages or benefits unless placed in an alternative work assignment. If the employee refuses the alternative work assignment and is returned to work, the employee shall not receive any back pay or benefits.

10-3. If an alternative work assignment is not available, the employee may use his or her accrued vacation and/or personal time while on investigative leave.

10-4. An employee shall receive back pay and benefits for the time the employee was on investigative leave, including prorated credit for vacation/personal time pursuant to Section 4-4

of the Back Pay Policy if all of the following occur:

- (a) The employee was not offered an alternative work assignment when placed on investigative leave; and
- (b) The employee is returned to his or her position; and
- (c) The employee is not disciplined or terminated based on the investigation.

**Article XI. Appeal**

11-1. In accordance with the personnel policies and procedures of the Tribe, an employee can appeal the findings in the written report and/or the decision arising out of the investigation within ten (10) business days of receiving the written report required in 7-3.

**Article XII. Confidentiality**

12-1. Information related to an investigation is confidential. Access or sharing of this information shall be limited to those who have a legitimate "need to know" in compliance with relevant laws and personnel policies and procedures.

12-2. All investigation materials shall be maintained in the employees personnel file with Human Resources Department.

*End.*

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OBC Approved 4-07-99-A  
Amended- 08-13-14-D

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: December 4, 2014
- 2) Contact Person(s): Jeff Mears Dept: Environmental  
Phone Number: 869-4555 Email: jmeears@oneidanation.org
- 3) Agenda Title: Environmental Health & Safety Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
1-Enable EHSD to protect land, water, air, people, and safety on the reservation.  
2- Authorize EHSD to protect the reservation, promote public health & safety and do business  
on the reservation. 3- Authorize EHSD to perform duties such as creating rules in  
implementing this law.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Draft Law
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

- 5) Please List any laws, ordinances or resolution that might be affected:  
Tribal Environmental Response Law, Hunting, Fishing, Trapping Law, Recycling & Solid Waste, Water Resources Ord.
- 6) Please List all other departments or person(s) you have brought your concern to:  
Land Law Development Environmental Housing Team (LLDEH)
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
If yes, please indicate why: In order to continue to develop and expand our sovereignty.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: \_\_\_\_\_

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
or  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376

## Environmental, Health and Safety

1.	Purpose and Policy	7	5.	Authority	
2.	Adoption, Amendment, Repeal	8	6.	Environmental Review	
3.	Definitions	9	7.	Public Health and Safety	
4.	Jurisdiction	10	8.	Enforcement	

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### **.1. Purpose and Policy**

.1-1. *Purpose.* The purposes of this Law are:

- (a) To enable the Environmental Health and Safety Division to protect the land, water, air, people and safety of the Reservation environment using the best technology available and in line with federal and state law standards;
- (b) To authorize the Environmental, Health and Safety Division to protect the Reservation, and to promote the public health and safety of the people who reside, do business within, or otherwise visit, the Reservation;
- (c) To authorize the Division to perform certain duties and functions, such as creating rules, in implementing this Law;

1-2. *Policy.* Various kinds of activities carried out by private persons and by governmental agencies within the Reservation may result in impacts on the environment or have implications for the public health and safety. The environmental impacts of activities within the territory of the Tribe may threaten the political integrity, the economic security and the health and safety of the Tribe and its members. It is the policy of the Oneida Tribe of Indians of Wisconsin to:

- (a) preserve and restore the environment and natural resources while strengthening and protecting people;
- (b) reclaim the Reservation land and enhance the environment by exercising their sovereignty;
- (c) prevent, reduce and eliminate pollution; and
- (d) protect existing and improve current conditions.

### **.2. Adoption, Amendment, Repeal**

.2-1. This Law was adopted by the Oneida Business Committee by Resolution \_\_\_\_\_.

.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### **.3. Definitions**

.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Development" means the performance of any construction activity; making any material change in the use or appearance of any structure or the making of any material change in the use or appearance of land, including wetlands.
- (b) "Division" means the Environmental Health and Safety Division of the Tribe.

(c) "Material change" means any change other than incidental repairs or changes in the supporting members of a building, such as bearing walls, columns, beams, or girders, or any change that would increase the floor space, area or height of a building, or change the exterior dimensions.

(d) "Reservation" means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(e) "Tribal" or "Tribe" means the Oneida Tribe of Indians of Wisconsin.

#### **.4. Jurisdiction**

.4-1. *Personal Jurisdiction.* This Law shall apply to:

(a) All Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes.

(b) Individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands.

(c) Individuals who have consented to the jurisdiction of the Tribe or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the Tribe:

(1) By entering into a consensual relationship with the Tribe, Tribal entities Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2) By other facts which manifest an intent to consent to the authority of the Tribe, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

.4-2. *Territorial Jurisdiction.* This Law extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Tribe within the State of Wisconsin.

#### **.5. Authority**

.5-1. *Environmental, Health and Safety Division.* The Environmental, Health and Safety Division (Division) of the Tribe shall be responsible for:

(a) Protecting the Reservation for the use by the Tribe and Tribal members;

(b) Conserving and protecting natural resources;

(c) Assessing, managing and restoring environmental impacts caused by development and land use;

(d) Administering and enforcing all Tribal environmental protection, health, and safety laws, including this Law;

(e) Exercising all other authority delegated upon it by law, or as may be reasonably necessary in the administration or enforcement of any environmental, health or safety protection laws; and

(f) Implementing this authority in accordance with the policies and the substantive and procedural requirements set forth in this Law and other applicable tribal and federal laws.

.5-2. *Division Director.* The powers delegated to the Division shall be exercised by a Director or by such other officials or employees to whom authority has been delegated by the Director.

The Director is authorized to establish Departments within the Division and to otherwise organize the Division in order to fulfill its responsibilities. The Director shall:

- (a) Report directly to the Oneida Business Committee, or a delegate of the Oneida Business Committee;
- (b) Establish the internal organization of the Division and allocate and reallocate duties and functions of the Division to promote economic and efficient administration and operation of the Division; and
- (c) Delegate any function vested by law in the Director, as necessary.

.5-3. *Oneida Business Committee.* The Oneida Business Committee is authorized to:

- (a) Take actions they believe to be necessary or advisable to support the work of the Division in carrying out this Law; and
- (b) Obligate funds for the Division.

.5-4. *Division Powers.* By enactment of this Law, the Division is delegated all powers necessary to carry out its responsibilities under this Law. In addition to any powers vested in the Division by any other Tribal law and throughout this Law, the Division shall have the power to:

- (a) Develop rules implementing this Law.
- (b) Issue guidance documents to assist other Tribal departments and persons residing or doing business within the Reservation to identify and achieve compliance with the requirements of federal and Tribal environmental, health, and safety laws.
- (c) Provide assistance to other Tribal departments and boards that are authorized to conduct hearings on any aspect of Tribal environmental, health, and safety laws;
- (d) Consult with representatives of science, industry, agriculture, labor, environmental protection, historic preservation, cultural heritage, and consumer organizations, and other groups, as the Division deems advisable;
- (e) Make use of the information, facilities, personnel, and other resources of federal and state agencies and Tribal departments;
- (f) Develop within the Tribe the capability to exercise enforcement authority. Such capability may be achieved, in part, by entering cooperative agreements for enforcement of this Law with federal or state authorities, or for the enforcement of federal environmental, health, and safety laws. Any such cooperative agreement shall be subject to the approval of the Oneida Business Committee, which may decide to present the agreement to the General Tribal Council for approval. The Division is also authorized to develop its capabilities through contracting with private firms and with other non-governmental entities. The Division shall seek to develop capacities in the following general areas:

- (1) Investigation of possible violations of this Law, the issuance of appropriate enforcement documents (including Inquiry Letters, Notices of Violation, and Cease and Desist Orders), and the administration of an enforcement process that includes civil penalties;
- (2) Inspections of facilities that are regulated by federal, state and local agencies to determine if such facilities are in compliance or, if not, whether enforcement action by EPA, or by the Division under the authority of EPA, would be appropriate; and
- (3) Use of citizen suit provisions under federal laws where applicable and appropriate, with legal counsel provided by the Oneida Law Office;

(g) Seek financial assistance from the federal government and from other sources as may be available to the Tribe for environmental, health and safety protection activities and facilities;

(h) Create task forces and ad hoc committees for the general purpose of seeking advice on environmental, health, and safety issues, particularly for advice in the development of rules, and to make recommendations to the Oneida Business Committee on the possible establishment of boards and commissions; with respect to task forces and ad hoc committees created to provide advice in rule-making, such entities may include representatives of tribal government institutions and others, including interested members of the public and representatives of stakeholder groups;

(i) Establish and publicize the means through which individuals or groups may submit reports of environmental problems and requests for information to the Division.

*.5-5. Relationship to the Tribe's Government and Tribal Departments.* The Division shall work cooperatively with the Oneida Business Committee and all Tribal boards, committees, corporations, divisions, and departments to implement this Law and other Tribal and Federal environmental, health, and safety laws. This includes consulting with other departments of the Tribe, including the Oneida Community Health Center, Risk Management and Emergency Management, to ensure all areas of public health and safety are covered without duplicating efforts across Tribal departments.

*.5-6. Reporting.* The Division shall report to the Oneida Business Committee and General Tribal Council at least twice a year. The Division may include an analysis of the effectiveness of this Law and other environmental, health, and safety laws and may also include proposals for amendments and/or new legislation to:

(a) Ensure that all requirements of federal environmental, health, and safety laws are being met on lands within the territorial jurisdiction of the Tribe; and

(b) Establish more stringent standards or requirements for certain kinds of pollutants or activities that cause environmental damage or threaten the public health or safety.

## **.6. Environmental Review**

6-1. An environmental review shall be conducted by or at the request of the Division on all proposed development. The environmental review shall be conducted in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings.

## **7. Public Health and Safety**

7-1. The Division shall monitor, regulate and protect the health, safety and well-being of the Reservation public through the creation of rules that strive to prevent injury and disease, promote healthy behaviors and increase the quality of life.

## **8. Enforcement**

8-1. Any violation of this Law or rules developed under this Law may result in:

(a) A fine of not more than five thousand dollars (\$5,000.00), for each violation. Each day of continued violation is a separate offense.

(b) Discipline under the Tribe's employment policies and procedures, if the violation is a result of an employee of the Tribe not following the Law or rule as a part of his or her job duties.

## Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: 12/3/14
- 2) Contact Person(s): Michelle Mays or Carol Giggins Dept: Law Office / Trust & Enrollment Committee Chair  
 Phone Number: 869-44921 Email: mmays@oneidanation.org / c.giggins@oneidanation.org
- 3) Agenda Title: Amendments to the Removal Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Currently, in order to remove an elected person from a board or committee the extensive process of the Removal law must be followed. The Trust & Enrollment Committee is asking that the Removal law be amended to give Boards and Committees the ability to remove a member if that member is failing to attend meetings or violates the bylaws of the board or committee. The Removal process is too costly.  
 List any supporting materials included and submitted with the Agenda Request Form
- 1) \_\_\_\_\_ 3) \_\_\_\_\_  
 2) \_\_\_\_\_ 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
Removal Law, Comprehensive Policy,
- 6) Please List all other departments or person(s) you have brought your concern to:  
 \_\_\_\_\_
- 7) Do you consider this request urgent? ☐ Yes ☒ No  
 If yes, please indicate why: \_\_\_\_\_

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: [Signature]

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

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FAX (920) 869-4065

## MEMORANDUM

**TO:** Brandon Yellowbird-Stevens, Chair, Legislative Operating Committee

**FROM:** Jo Anne House, Chief Counsel 

**DATE:** December 9, 2014

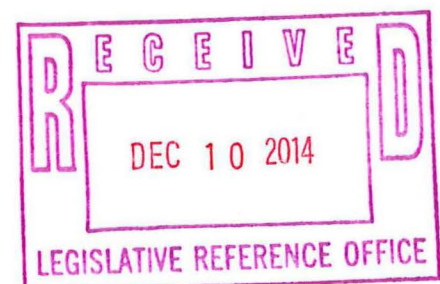
**SUBJECT:** Amendments – Removal Law

I am requesting consideration of amendments to the Removal Law. The Removal Law is restricted to amendment by the General Tribal Council. However the application of the law is unduly prohibitive in nature regarding elected officials who sit on boards, committees and commissions. The proposed recommendations would involve limiting the Removal Law to the Oneida Business Committee only and drafting a separate law regarding removal of elected officials to other boards, committees and commissions.

As currently drafted, the Removal Law applies to all elected officials. This includes the Oneida Business Committee; as well as other entities, for example, the Gaming Commission, Trust and Enrollment Committee, School Board, Commission on Aging, Land Claims Commission, and Land Commission. The law is geared toward individuals presenting requests for removal, which is consistent regarding the Oneida Business Committee as representative of the membership. However, for those other entities, it is generally the entity that would be most interested in bringing the removal forward in order to maintain the integrity of its responsibilities. For example, a member failing to attend meetings jeopardizing the ability to meet quorum requirements or a member which develops a conflict of interest with the responsibilities of the entity and failing to correct for such conflict.

I have attached proposed changes to the Removal Law which recognize the differences between the Oneida Business Committee and members of boards, committees or commissions. The process for removal of an Oneida Business Committee member remains unchanged. The process regarding an elected official would include the ability of a board, committee or commission to adopt a removal request by majority vote as well as a removal petition submitted by a member. In addition, instead of submission of the judicial review to the General Tribal Council, the Oneida Business Committee is authorized to take action.

If you have further questions, please contact me.



## Chapter 4 REMOVAL LAW

**Kwah On^ <luwalihut@kwas Kayanl^hsla**

Just when they will remove him our kind of laws

4.1. Purpose and Policy	4.5. Petition
4.2. Adoption, Amendment, Repeal	4.6. Preliminary Review
4.3. Definitions	4.7. Hearing
4.4. Grounds for Removal	4.8. General Tribal Council Meeting

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### 4.1. Purpose and Policy

4.1-1. The purpose of this law is to govern the removal of persons elected to serve on on the Oneida Business Committee and on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin.

4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair process for the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions.

### 4.2. Adoption, Amendment, Repeal

4.2-1. This law is adopted by the General Tribal Council by GTC Resolution #1-09-06-A and amended by Resolution BC-05-28-14-B and by GTC Resolution #.

4.2-2. This law may be amended by the General Tribal Council only.

4.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

4.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this law. Specifically, the following resolutions are repealed by this law:

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members)
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance)
- (c) BC-1-03-96-B (BC Adoption of Removal Law)
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law)

### 4.3. Definitions

4.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Counsel" means an attorney or advocate.
- (b) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (c) "Tribe" means the Oneida Tribe of Indians of Wisconsin.
- (d) "Elected official" means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee.

#### **4.4. Grounds for Removal – Elected Official**

- 4.4-1. An elected official may be removed from office for any of the following reasons:
- (a) failure to attend four (4) regularly scheduled meetings without a written explanation,
  - (b) failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason ~~provided that this subsection shall not apply to the Oneida Business Committee,~~
  - (c) violation of the by-laws, operating agreements, laws, regulations or Standard Operating Procedures of the board, committee or commission,
  - (ed) intentional mis-use of Tribal funds,
  - (de) alcohol use while performing official responsibilities or use of illegal drugs at any time,
  - (ef) if he or she no longer meets the qualifications for office,
  - (fg) violating a Tribal law which specifies removal as a penalty, or
  - (gh) felony conviction while in office.

#### **4.4a. Grounds for Removal – Oneida Business Committee**

4.4-1. A member of the Oneida Business Committee may be removed from office for any of the following reasons:

- (a) failure to attend four (4) regularly scheduled meetings without a written explanation,
- (b) intentional mis-use of Tribal funds,
- (c) alcohol use while performing official responsibilities or use of illegal drugs at any time,
- (d) if he or she no longer meets the qualifications for office,
- (e) violating a Tribal law which specifies removal as a penalty, or
- (f) felony conviction while in office.

#### **4.5. Petition – Oneida Business Committee**

4.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an ~~elected official~~ Oneida Business Committee member. No petition shall request the removal of more than one (1) ~~elected official~~ Oneida Business Committee member. The petition shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words, and must be signed by fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the vote cast in the previous general election, whichever is greater. A petition may not be amended after it is filed with the Tribal Secretary.

4.5-2. The petition shall be filed within thirty (30) days after the date the first signature is obtained on the petition.

4.5-3. The petition shall contain, in ink:

- (a) The appropriate lines for the eligible voter's:
  - (1) Printed name
  - (2) Signature
  - (3) Street address
  - (4) Enrollment number
- (b) An oath verifying the fact that:
  - (1) The circulator witnessed each person sign the petition,
  - (2) Each signature appearing thereon is the genuine signature of the person it purports to be, and
  - (3) The petition was signed in the presence of the witness on the date indicated.

4.5-4. Upon receipt of a petition, the Tribal Secretary shall promptly:

(a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within five (5) business days, determine whether the petition contains the requisite number of signatures of eligible voters; and

(b) Notify the ~~elected official~~ Oneida Business Committee member sought to be removed that a petition has been filed seeking his or her removal by providing a copy of the uncertified petition.

4.5-5. If the Enrollment Department determines that the petition does not contain the requisite number of signatures, the Tribal Secretary shall so certify to the Oneida Business Committee and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4.5-6. If the Enrollment Department determines that the petition contains the requisite number of signatures, then the Tribal Secretary shall promptly cause a certified copy of the petition to be served upon the elected official sought to be removed and forward a copy of the same to the Judiciary.

4.5-7. In the event the removal of the Tribal Secretary is sought, the Tribal Vice Chairperson shall perform the duties assigned to the Secretary under this law.

#### **4.6. Preliminary Review – Oneida Business Committee**

4.6-1. The Judiciary, upon receipt of the petition shall schedule a preliminary review, to take place within twenty (20) calendar days, to determine whether the allegations set forth in the petition would constitute sufficient grounds for removal. The Judiciary may request that the parties submit arguments in writing, and the parties may be represented by counsel.

4.6-2. If the Judiciary determines that a petition does not allege sufficient grounds for removal, the petition shall be dismissed. If the Judiciary determines that the petition alleges sufficient grounds for removal, the Judiciary shall conduct a hearing under 4.7.

4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition may be reviewed by the Judiciary upon motion of the elected official whose removal is sought. The motion shall be filed within twenty (20) calendar days of service of the certified copy of the petition upon the elected official sought to be removed. The motion shall be in writing and the grounds limited to:

- (a) the authenticity of the signatures, and
- (b) whether the signature is that of an eligible voter.

4.6-4. The Judiciary review shall be conducted in the presence of the parties, who may be represented by counsel during the inspection. Opportunity to present evidence and testimony shall be provided. If the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed.

~~4.6-5. In the event the removal of a member of the Judiciary is sought, the Clerk of Courts shall convene a panel of three (3) judges who are members of the Wisconsin Tribal Judges Association to carry out the Judiciary's responsibilities under this law.~~

#### **4.7. Hearing – Oneida Business Committee**

4.7-1. *Rights of ~~Elected Official~~ Oneida Business Committee Member at Hearing.* An ~~elected official~~ Oneida Business Committee member whose removal is sought shall have the right to present witnesses on his or her behalf, to cross-examine adverse witnesses, to, at his or her expense, be represented by counsel of his or her choice.

4.7-2. *Burden of Proof.* A person seeking the removal of an ~~elected official~~ Oneida Business Committee member shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

4.7-3. *Findings.* The Judiciary shall, within twenty (20) calendar days after the preliminary review has been completed, determine whether each allegation of the petition has been proven by clear and convincing evidence, and whether such allegations constitute sufficient grounds for removal under 4.4-1. If the Judiciary determines that sufficient grounds have not been proven the Judiciary shall dismiss the petition. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary shall forward the written findings to the Tribal Chair.

#### **4.8. General Tribal Council Meeting – Oneida Business Committee**

4.8-1. *Special Meeting.* Upon receipt of the findings from the Judiciary, the Tribal Chair shall call a special General Tribal Council meeting to consider the findings to be held within forty-five (45) calendar days after receipt of the Judiciary findings.

4.8-2. *Right to address the Council.* An ~~elected official~~ Oneida Business Committee member whose removal is sought shall have the right to address the General Tribal Council personally.

4.8-3. *Determination.* An ~~elected official~~ Oneida Business Committee member may only be removed from office upon the affirmative vote of a two-thirds (2/3) majority of the General Tribal Council at a meeting called for the purpose of considering the removal.

4.8-4. *Quorum.* If the meeting of the General Tribal Council fails to obtain a quorum, the removal petition shall be dismissed.

#### **4.9. Petition – Elected Official**

4.9-1. An elected official may be subject to removal either by petition or by request of the board, committee or commission.

(a) Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an elected official. No petition shall request the removal of more than one (1) elected official. The petition shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words, and must be signed by fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the vote cast in the previous general election, whichever is greater. A petition may not be amended after it is filed with the Tribal Secretary.

(b) A board, committee, or commission may file a removal request with the Tribal Secretary adopted by majority vote of the board, committee or commission. No removal request shall request the removal of more than one (1) elected official. The removal request shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words. A removal request may not be amended after it is filed with the Tribal Secretary.

4.9-2. The petition or removal request shall be filed within thirty (30) days after the date the first signature is obtained on the petition or adoption by the board, committee or commission.

4.9-3. The petition shall contain, in ink:

(a) The appropriate lines for the eligible voter's:

- (1) Printed name
- (2) Signature
- (3) Street address
- (4) Enrollment number

(b) An oath verifying the fact that:

- (1) The circulator witnessed each person sign the petition,
- (2) Each signature appearing thereon is the genuine signature of the person it purports to be, and
- (3) The petition was signed in the presence of the witness on the date indicated.

4.9-4. Upon receipt of a petition or removal request, the Tribal Secretary shall promptly:

(a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within five (5) business days, determine whether the petition contains the requisite number of signatures of eligible voters; and

(b) Notify the elected official sought to be removed that a petition or removal request has been filed seeking his or her removal by providing a copy of the uncertified petition.

4.9-5. If the Enrollment Department determines that the petition does not contain the requisite number of signatures, the Tribal Secretary shall so certify to the Oneida Business Committee and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4.9-6. In the case of a petition, if the Enrollment Department determines that the petition contains the requisite number of signatures, then the Tribal Secretary shall promptly cause a certified copy of the petition to be served upon the elected official sought to be removed and forward a copy of the same to the Judiciary.

4.9-7. In the case of a removal request, if upon verification of the action of the board, committee or commission the Tribal Secretary shall promptly cause a certified copy of the removal request to be served upon the elected official sought to be removed and forward a copy of the same to the Judiciary.

#### **4.10. Preliminary Review – Elected Official**

4.10-1. The Judiciary, upon receipt of the petition or removal request shall schedule a preliminary review, to take place within twenty (20) calendar days, to determine whether the allegations set forth in the petition would constitute sufficient grounds for removal. The Judiciary may request that the parties submit arguments in writing, and the parties may be represented by counsel.

4.10-2. If the Judiciary determines that a petition or removal request does not allege sufficient grounds for removal, the petition or removal request shall be dismissed. If the Judiciary determines that the petition or removal request alleges sufficient grounds for removal, the Judiciary shall conduct a hearing under 4.11.

4.10-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition or the validity of the action of the board, committee or commission adopting a removal request may be reviewed by the Judiciary upon motion of the elected official whose removal is sought. The motion shall be filed within twenty (20) calendar days of service of the certified copy of the petition or removal request upon the elected official sought to be removed. The motion shall be in writing and the grounds limited to:

(a) the authenticity of the signatures on a petition,

(b) whether the signature on the petition is that of an eligible voter; or

(c) the validity of the action taken by a board, committee or commission in approving a removal request.

4.10-4. The Judiciary review shall be conducted in the presence of the parties, who may be represented by counsel during the inspection. Opportunity to present evidence and testimony shall be provided. If the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. If the Judiciary determines that a removal request does not contain valid action by the board, committee or commission the removal request shall be dismissed.

#### **4.11. Hearing – Elected Officials**

4.11-1. *Rights of Elected Official at Hearing.* An elected official whose removal is sought shall have the right to present witnesses on his or her behalf, to cross-examine adverse witnesses, to, at his or her expense, be represented by counsel of his or her choice.

4.11-2. *Burden of Proof.* A person seeking the removal of an elected official shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

4.11-3. *Findings.* The Judiciary shall, within twenty (20) calendar days after the preliminary review has been completed, determine whether each allegation of the petition or removal request has been proven by clear and convincing evidence, and whether such allegations constitute sufficient grounds for removal under 4.4-1. If the Judiciary determines that sufficient grounds have not been proven the Judiciary shall dismiss the petition or removal request. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary shall forward the written findings to the Tribal Chair.

#### **4.12. Oneida Business Committee Meeting – Elected Officials**

4.12-1. *Special Meeting.* Upon receipt of the findings from the Judiciary, the Tribal Chair shall call a special Oneida Business Committee meeting to consider the findings to be held within forty-five (45) calendar days after receipt of the Judiciary findings.

4.12-2. *Right to address the Oneida Business Committee.* An elected official whose removal is sought shall have the right to address the Oneida Business Committee personally.

4.12-3. *Determination.* An elected official may only be removed from office upon the affirmative vote of six members of the Oneida Business Committee at a meeting called for the purpose of considering the removal.

*End.*

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Adopted GTC-01-09-06-A  
Amended – BC-05-28-14-B

# December 2014

December 2014							January 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
7	1	2	3	4	5	6	4	5	6	7	1	2	3
14	8	9	10	11	12	13	11	12	13	14	8	9	10
21	15	16	17	18	19	20	18	19	20	21	15	16	17
28	22	23	24	25	26	27	25	26	27	28	22	23	24
	29	30	31								29	30	31

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 30 - Dec 6	Nov 30	Dec 1	2	3	4	5	6
				9:00am 2:00pm LOC Meeting (BCCR)			
Dec 7 - 13	7	8	9	10	11	12	13
				BC Meeting (BCCR)			
Dec 14 - 20	14	15	16	17	18	19	20
				9:00am 2:00pm LOC Meeting (BCCR)			
Dec 21 - 27	21	22	23	24	25	26	27
				BC Meeting (BCCR) 12:00pm 4:30pm Christmas Eve	Christmas		
Dec 28 - Jan 3	28	29	30	31	Jan 1, 15	2	3

# January 2015

January 2015							February 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
4	5	6	7	8	9	10	1	2	3	4	5	6	7
11	12	13	14	15	16	17	8	9	10	11	12	13	14
18	19	20	21	22	23	24	15	16	17	18	19	20	21
25	26	27	28	29	30	31	22	23	24	25	26	27	28

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Dec 28 - Jan 3	Dec 28	29	30	31	Jan 1, 15	2	3
					New Year's		
Jan 4 - 10	4	5 6:00pm 9:00pm Annual GTC Meeting (Radisson)	6	7 9:00am 2:00pm LOC Meeting (BCCR)	8	9	10
Jan 11 - 17	11	12	13	14 BC Meeting (BCCR)	15	16	17
Jan 18 - 24	18	19 6:00pm 9:00pm GTC Meeting-Budget (Radisson)	20	21 9:00am 2:00pm LOC Meeting (BCCR)	22	23	24
Jan 25 - 31	25	26	27	28 BC Meeting (BCCR)	29	30	31